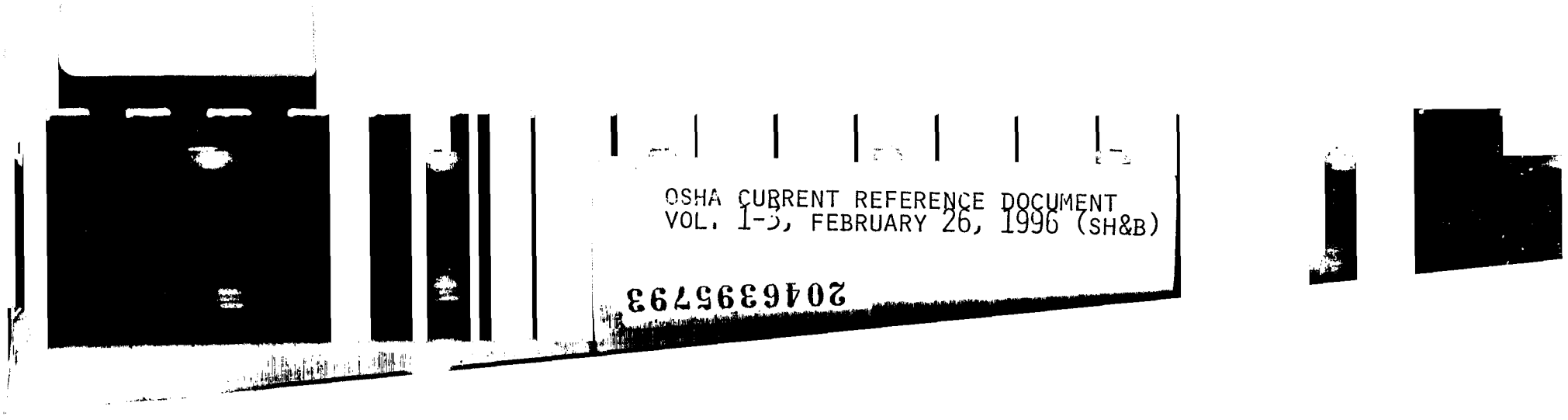

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LAW OFFICES

SHOOK, HARDY & BACON L.L.P.

OSHA'S PROPOSED RULE ON INDOOR AIR QUALITY DOCKET NO. H-122

A Current Reference Document

February 22, 1996

Volume 2 of 3

Supplementing the Reports on Recent ETS and IAQ Developments

SHB

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News
United States Department of Labor
Office of Information
Washington, D.C. 20210

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USDL: 93-18
FOR RELEASE: IMMEDIATE
THURSDAY, JANUARY 14, 1993

STATEMENT BY SECRETARY OF LABOR LYNN MARTIN

As part of our commitment to improve workplace health and safety, today I am directing OSHA as soon as possible consistent with applicable statutory requirements and executive orders, to commence rulemaking that addresses the hazards of occupational exposure to secondhand smoke.

This is an issue that requires our immediate attention. There is a growing body of evidence that exposure to secondhand tobacco smoke is hazardous to the health of nonsmokers. The EPA's report on the effects of passive smoke in the home environment is a major contribution to this evidence.

OSHA's Office of Health Standards is currently completing its analysis of the responses to our recent request for information about issues related to indoor air quality. A great deal of the information received in response to that request relates specifically to the hazards of exposure to environmental tobacco smoke in the workplace. OSHA will continue to evaluate this information and the EPA report, and incorporate the material into its consideration of this issue.

The action we are taking today is apart from the indoor air quality rulemaking. The EPA report focuses on the home environment. It raises troubling concerns about the effects of passive smoke. OSHA must examine these concerns and determine how they apply to the workplace.

So I have asked OSHA to proceed expeditiously and comprehensively. As a first step to implement my directive, OSHA will prepare a report for the incoming Secretary. This report will discuss the extent of the hazard, describe the rulemaking alternatives available to the Department and provide a basis for determining the most effective rulemaking course.

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Specifically, the report will include an analysis of the evidence in terms of the threshold OSHA must meet in order to regulate. It will also discuss any special pertinent issues, such as means of applying evidence obtained from studies of exposure to tobacco smoke in the home to workplace settings.

Our actions should be dictated by scientific evidence, and not by emotions or special interests. This approach allows OSHA to best understand how to move ahead with a proposed rule.

This information will be made available to sensory impaired individuals upon request. Voice Phone: 202-219-6060, TDD Message Referral Phone: 1-800-326-2577.

The text of this release is available at no cost to caller from the Department of Labor electronic bulletin board, LABOR NEWS, at 1-800-597-1221 or locally at 202-219-4784. 300, 1200 or 2400 BAUD; Parity: None; Data Bits = 8; Stop Bit = 1. Voice phone: 202-219-7343.

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

JAN 13 1993

MEMORANDUM FOR DOROTHY STRUNK

FROM: LYNN MARTIN

SUBJECT: Environmental tobacco smoke in the workplace

I appreciate our recent discussions on the growing body of evidence that exposure to secondhand tobacco smoke is hazardous to the health of nonsmokers. I understand that OSHA's Office of Health Standards is currently completing its analysis of the responses to our recent Request for Information about issues related to indoor air quality, and that a great deal of the information received in response to that request relates specifically to the hazards of exposure to environmental tobacco smoke in the workplace. As you know, the Environmental Protection Agency has sent the Department its recent report, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. I would like OSHA to study that report and incorporate the material in it into its consideration of this issue.

By this memorandum, I am also directing OSHA, as soon as possible consistent with applicable statutory requirements and executive orders, to commence rulemaking to address the hazards of occupational exposure to secondhand smoke. As a first step to implement this directive, OSHA should prepare a report for the incoming Secretary. This report should discuss the extent of the hazard, describe the rulemaking alternatives available to the Department, and provide a basis for determining the most effective rulemaking course. Specifically, it should include an analysis of the evidence in terms of the threshold OSHA must meet in order to regulate, and discuss any special issues that are pertinent, such as means of applying evidence obtained from studies of exposure to tobacco smoke in the home to workplace settings.

I believe that resolution of this issue is one of the most significant matters facing OSHA, and I ask you to direct your staff to treat this project as one of the Department's highest priorities.

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Federal News Service

MARCH 25, 1994, FRIDAY

SECTION: MAJOR LEADER SPECIAL TRANSCRIPT

LENGTH: 1369 words

HEADLINE: NEWS CONFERENCE WITH
SECRETARY OF LABOR ROBERT REICH,
TOM WILLIAMSON, SOLICITOR, DEPARTMENT OF LABOR,
AND JOE DEAR, ASSISTANT SECRETARY,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
RE: INDOOR TOBACCO SMOKE
DEPARTMENT OF LABOR, WASHINGTON, DC

BODY:
SEC. REICH: Good morning. Today I am instructing the Occupational Safety and Health Administration to propose a rule which would dramatically improve air quality for millions of American workers at the work place. Each day in this country, working men and women face a threat to their health because of poor indoor air quality, including tobacco smoke and other contaminants.

The decision to propose a strong set of standards to remedy this hazard was not taken lightly. Soon after this administration arrived in Washington, we commenced an analysis of all of the research to date linking poor air quality at the work place to serious illnesses and deaths among American workers, including heart disease, upper respiratory illnesses and disease, and cancer. After many months of analysis, it is clear that there is sufficient evidence to commence this rulemaking proceeding. I should add that the Department of Labor itself is not, at this time, in full compliance with this proposed rule, and I am today asking the assistant secretary for administration and management, working with the department's joint Labor, Management, Safety and Health Committee, and our

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employee unions to provide me with a plan for improving the air quality and
providing all employees with a smoke-free work place in all department
facilities in accordance with our proposal.
I have asked the Occupational Safety and Health Administration to proceed on
this issue quickly, but also carefully. It's my preliminary judgment that the
proposed rule will protect the lives of millions of American workers without
unduly burdening American employers. We are going to invite comment on this
rule, and we will take those comments into full consideration in drafting a
final rule.
A well-trained and healthy work force is in the interests not just of American
workers, it's in the interests of all Americans, American employers included.
There is no better way to improve American productivity and American
competitiveness than to ensure a well-trained and healthy work force.
Now I'd like to introduce to you two people who have helped in the decision up
to date -- Tom Williamson, who is -- on my right -- solicitor of Labor, and
also, Joe Dear -- on my left -- who is assistant secretary for occupational
safety and health.
And Joe, let me ask you to provide your remarks, please.
MR. DEAR: Thank you, Mr. Secretary. Today we're announcing one of the most
extensive rulemakings that OSHA has ever undertaken. The indoor air quality
provisions of this proposed rule will apply to over 4-1/2 million work sites,
and the environmental tobacco smoke provisions of this proposed rule will
apply to the over 6 million work sites that are under OSHA's jurisdiction.
Now non-industrial work sites include offices, educational facilities,
commercial establishments, educational facilities, office areas, and the break
rooms of manufacturing or production facilities.
The proposal would require affected employers to develop and implement indoor

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air quality compliance plans which would include measures such as inspection and maintenance to ensure that current building heating and ventilating systems are functioning as designed. The proposal would not require all building owners and employers to install new ventilation systems. For those buildings where smoking is not prohibited by employers or by local requirements, the proposal would require designated smoking areas which are separate and which have outside exhaust systems.

These rules are an opportunity to invest in prevention. Although there will be costs associated with compliance, the ultimate impact will be a net savings in lives and to the economy. The proposal will protect America's working men and women from heart disease, lung cancer, pulmonary tract infections and countless other diseases and illnesses all linked to poor indoor air quality and environmental tobacco -- (audio break) --

MR. DEAR: The first-year cost, again, is estimated to be $1.4 billion. The continuing cost is $6.6 billion.

Q (Off mike.)

MR. DEAR: There is an extensive record produced by virtue of the requests for information that OSHA made several years ago -- over 1,200 comments in the record, and those comments span the gamut from opposition to this action to full support.

Q How would this affect very small -- those with less than 10 employees or people who are self-employed and perhaps even work out of their own homes?

MR. DEAR: Again, OSHA regulates worker safety and health, and holds employers responsible for the safety and health of their workers at their work sites.

There is no threshold applied to the indoor air quality or environmental tobacco smoke provisions.

It's commonly thought, apparently, that there is some restriction on OSHA's

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authority with respect to small employers under 10. That only applies to their scheduling for certain types of inspection. All employers are required to comply. A self-employed individual, by virtue of being self-employed -- not an employer -- is not subject to Occupational Safety and Health Administration regulation.

Q (Off mike) -- situations like you mentioned with restaurants where it's going to be basically or virtually impossible to have smoking in those situations -- (off mike)?

MR. DEAR: That's the -- I think the most prominent example of an impact. We expect if others exist, they will be brought to our attention in the public hearing process.

Q How about outdoor work sites? Does it affect them at all?

MR. DEAR: Yes.

Q How?

MR. DEAR: Well, it includes -- it does include the construction industry.

Q So there you couldn't have a separate room, so it would just be a ban on smoking, I guess.

MR. DEAR: Again, with respect to -- say that's a public facility and OSHA's regulatory authority is between employer and employees. Q On the outside work site it would -- it wouldn't be the separate room alternate there.

MR. DEAR: At the outdoor facility -- the rule covers indoor air quality and indoor environments, non-industrial work sites. So outdoor facilities are not directly affected by this.

Q It would not include, then, agricultural workers who are working with pesticides, or fumes from the cutting of tobacco leaves, for instance, which is a known danger?

MR. DEAR: We -- this is a -- pesticide regulation is primarily a function of the Environmental Protection Agency under the way responsibilities are divided up under federal law.

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With respect to agricultural employees, they are covered by OSHA, and we are
aware of the study produced by the National Institute of Occupational Safety and
Health with respect to health problems associated with tobacco harvesting. This
rule does not have any affect on that particular work place problem.
Q How much flexibility will you be willing to give in the comment period, and do
you think you will be willing to exempt restaurants from that?
SEC. REICH: Let me turn this over to our solicitor here.
MR. WILLIAMSON: The reason we have a comment period is to try to inform
ourselves about the perspectives of various different interests. I think it
would be premature to announce before we've gotten the comments what degree of
flexibility we would respond with. I think that depends on the newness of the
information and other merits of the comments that are actually provided.
SEC. REICH: I want you all to be clear about this, that we feel there is
sufficient evidence to move ahead with this. There is a large body of empirical
research showing a linkage and linkages between air contaminants, including
tobacco smoke, but also other contaminants, and injuries, illnesses, death from
those contaminants at the work place -- sufficient evidence to commence this
rulemaking.
We want to provide parties an opportunity to provide additional evidence, to
give us whatever other comments, whatever evidence -- additional evidence may be
out there.
STAFF: Ladies and gentlemen, one more question, please.
Q In addition to restaurants, wouldn't bars essentially be no smoking areas as
well?
MR. DEAR (?): Yes. STAFF: Thank you very much.
SEC. REICH: Thank you.
END

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News
United States Department of Labor
Office of Information Washington, D.C. 20210

Occupational Safety and Health Administration

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USDL: 94-154
FOR RELEASE: Immediate
Friday, March 25, 1994

OSHA PROPOSES INDOOR AIR QUALITY, WORKPLACE SMOKING RULES

In an effort to secure a safe and healthful work environment for America's workforce, Secretary of Labor Robert B. Reich today announced the department's Occupational Safety and Health Administration (OSHA) is moving to regulate indoor air quality and environmental tobacco smoke.

"Every day in this country more than 20 million working men and women face unnecessary health threats because of poor indoor air quality and environmental tobacco smoke," Reich said. "The proposed rule is designed to tackle these problems.

"We are confident that compliance with the rule will reduce the suffering and disease associated with poor indoor air quality and environmental tobacco smoke. OSHA has taken this action to prevent thousands of heart disease deaths, hundreds of lung cancer deaths, and the respiratory diseases and other ailments linked to these hazards," said Reich.

According to Reich, "the proposed rule is an investment in prevention. Lives will be saved, health care costs reduced and productivity increased."

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Assistant Secretary of Labor Joseph A. Dear, head of OSHA, added that "the rule is one of the most extensive ever proposed by OSHA. The environmental tobacco smoke provisions in the proposal apply to more than 6 million workplaces under OSHA jurisdiction, while the indoor air provisions apply to more than 4.5 million non-industrial worksites."

Non-industrial workplaces include offices, schools and training centers, commercial establishments, health care facilities, cafeterias and factory break rooms.

The proposal would require affected employers to write and implement indoor air quality compliance plans including inspection and maintenance of current building systems to ensure they are functioning as designed. The proposal would not require all building owners and employers to install new ventilation systems.

In buildings where smoking is not prohibited by employers or local requirements, the proposal would require designated smoking areas which are separate, enclosed rooms exhausted directly to the outside. Other proposed provisions would require employers to maintain healthy air quality during renovation, remodeling and similar activities.

"This proposed rule on indoor air quality and environmental tobacco smoke is part of the most ambitious standard-setting agenda in OSHA history," said Reich. "The standards OSHA plans to set over the next two years will help ensure that America's working men and women will not face unnecessary risks and health hazards in their workplace.

"The department is committed to tackling the tough issues and tackling them with tough regulations. That's what the new OSHA is all about."

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The proposed rule will be delivered to the Federal Register on March 28 with publication expected in a week to 10 days.

Written comments on the proposal should be submitted within 90 days of publication in quadruplicate or on a disk (in WP 5.0, 5.1, 6.0 or Ascii) with one hard copy and information not contained in the disk (e.g. studies, articles, etc.) submitted in quadruplicate, to the OSHA Docket, Docket No. H-122, Room N-2625, 200 Constitution Ave. N.W., Washington, D.C. 20210

Requests for public hearings should be submitted within 30 days after publication in the Federal Register to Tom Hall, OSHA Division of Consumer Affairs, Room N-3649, 200 Constitution Ave. N.W., Washington, D.C. 20210 (phone: 202-219-8617). Such requests should include a statement on reasons hearings are necessary and the issues a requestor would anticipate addressing.

If hearings are held, a notice will be published in the Federal Register announcing date(s), time(s) and location(s).

#####

Note to editors: See attached fact sheet for details of the proposed rule.

The text of this news release is available from the Department of Labor electronic bulletin board, LABOR NEWS, at 202-219-4784. Callers must pay any toll-call charges. 300, 1200, 2400, 9600 or 14,400 BAUD; Parity: None; Data Bits=8; Stop Bits=1; Voice phone 202-219-8831.

The information in this news release will be made available to sensory impaired individuals upon request. Voice phone: 202-219-8151.

A statement by Secretary Reich on indoor air quality will be available on the department's audio news service after 12 p.m. E.S.T. 1-800-877-9002.

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FACT SHEET ON OSHA PROPOSED RULE

HEALTH EFFECTS OF POOR INDOOR AIR QUALITY AND ENVIRONMENTAL TOBACCO SMOKE

-- Poor indoor air quality has been shown to result in headaches, respiratory infections, wheezing, nausea, dizziness, respiratory allergies, Legionnaire's disease, influenza, colds, measles, pulmonary tract infections and other ailments.

-- Exposure to environmental tobacco smoke has been linked to heart disease, lung cancer, decreases in pulmonary function, low birthweight babies, miscarriages, a number of birth defects and other illnesses and diseases.

-- Of more than 70 million employees working indoors, OSHA estimates that 21 million are exposed to poor indoor air and millions of others are exposed to environmental tobacco smoke.

SCOPE OF PROPOSAL

-- Provisions for indoor air quality apply to 70 million workers and more than 4.5 million non-industrial indoor work environments, including offices, schools, commercial establishments, health care facilities, cafeterias and break rooms.

-- Environmental tobacco smoke provisions apply to industrial and non-industrial work environments, or all of the over 6 million work environments under OSHA jurisdiction.

COMPLIANCE REQUIREMENTS (partial listing)

-- Employers must develop and implement indoor air quality compliance plans.

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-- Employers are required to assure proper functioning of building systems which affect indoor air quality.

-- Employers who do not prohibit smoking must designate non-working smoking areas that are enclosed and exhausted directly to the outside.

-- Employers who do not control their building's ventilation systems must demonstrate a good faith effort to comply.

-- Full implementation of the standard must go into effect one year from the effective date.

# # #

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§ 1910.1033 Indoor Air Quality.

(a) Scope and application. (1) The provisions set forth in this section apply to all nonindustrial work environments.

(2) The provisions set forth in paragraph (e)(1) of this section, which address employee exposure to tobacco smoke, apply to all indoor or enclosed workplaces under OSHA jurisdiction.

(b) Definitions

Air contaminants refers to substances contained in the vapors from paint, cleaning chemicals, pesticides, and solvents, particulates, outdoor air pollutants and other airborne substances which together may cause material impairment to employees working within the nonindustrial environment.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Building-Related Illness describes specific medical conditions of known etiology which can be documented by physical signs and laboratory findings. Such illnesses include sensory irritation when caused by known agents, respiratory allergies, asthma, nosocomial infections, humidifier fever, hypersensitivity pneumonitis, Legionnaires' disease,, and the signs and symptoms characteristic of exposure to chemical or biologic substances such as carbon monoxide, formaldehyde, pesticides, endotoxins, or mycotoxins.

Building systems include but are not limited to the heating, ventilation and air-conditioning (HVAC) system, the potable water systems, the energy management system and all other systems in a facility which may impact indoor air quality.

Designated person means a person who has been given the responsibility by the employer to take necessary measures to assure compliance with this section and who is knowledgeable in the requirements of this standard and the specific building systems servicing the affected building or office.

Designated smoking area means a room, in a non-work area, in which smoking of tobacco products is permitted.

Director means the Director, National Institute for Occupational Safety and Health (NIOSH) U.S. Department of Health and Human Services or designee.

Employer means all persons defined as employers by Sec. 3(5) of the Occupational Safety and Health Act of 1970 including employers (such as building owners or lessees) who control the ventilation or maintenance of premises where employees of other employers work.

HVAC system means the collective components of the heating, ventilation and air-conditioning system including, but not limited to, filters and frames, cooling coil condensate drip pans and drainage piping, outside air dampers and actuators, humidifiers, air distribution ductwork, automatic temperature controls, and cooling towers.

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Nonindustrial work environment means an indoor or enclosed work space such as, but not limited to, offices, educational facilities, commercial establishments, and healthcare facilities, and office areas, cafeterias, and break rooms located in manufacturing or production facilities used by employees. Non-industrial work environments do not include manufacturing and production facilities, residences, vehicles, and agricultural operations.

Renovation and remodeling means building modification involving activities that include but are not limited to: removal or replacement of walls, ceilings, floors, carpet, and components such as moldings, cabinets, doors, and windows; painting, decorating, demolition, surface refinishing, and removal or cleaning of ventilation ducts.

(c) Indoor air quality (IAQ) compliance program

(1) All employers with workplaces covered by paragraph (a)(1) of this section shall establish a written IAQ compliance program.

(2) The employer shall identify a designated person who is given the responsibility to assure implementation of the IAQ compliance program.

(3) Written plans for compliance programs shall include at least the following:

(i) A written narrative description of the facility building systems;

(ii) Single-line schematics or as-built construction documents which locate major building system equipment and the areas that they serve;

(iii) Information for the daily operation and management of the building systems, which shall include at least a description of normal operating procedures, special procedures such as seasonal start-ups and shutdowns, and a list of operating performance criteria including, but not limited to minimum outside air ventilation rates, potable hot water storage and delivery temperatures, range of space relative humidities, and any space pressurization requirements.

(iv) A general description of the building and its' function including but not limited to, work activity, number of employees and visitors, hours of operation, weekend use, tenant requirements and known air contaminants released in the space;

(v) A written maintenance program for the maintenance of building systems which shall be preventive in scope and reflect equipment manufacturer's recommendations and recommended-good-practice as determined by the building systems maintenance industry. At a minimum, the maintenance program shall describe the equipment to be maintained, and recommend maintenance procedures and frequency of performance.

(vi) A checklist for the visual inspection of building systems.

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(4) The following additional information, if available, shall be retained by the employer to assist in potential indoor air quality evaluations:
(i) As-built construction documents;
(ii) HVAC system commissioning reports;
(iii) HVAC systems testing, adjusting and balancing reports;
(iv) Operations and maintenance manuals;
(v) Water treatment logs; and
(vi) Operator training materials

(5) The employer shall establish a written record of employee complaints of signs or symptoms that may be related to building-related illness to include at least information on the nature of the illness reported, number of employees affected, date of employee complaint, and remedial action, if any, taken to correct the source of the problem.

(d) Compliance program implementation . Employers shall assure compliance with this section by implementing at least the following actions:

(1) Maintain and operate the HVAC system to assure that it operates up to original design specifications and continues to provide at least the minimum outside air ventilation rate, based on actual occupancy, required by the building code, mechanical code, or ventilation code applicable at the time the facility was constructed, renovated, or remodeled, whichever is most recent;

(2) Conduct building systems inspection and maintenance in accordance with paragraph (c);

(3) Assure that the HVAC system is operating during all work shifts, except during emergency HVAC repairs and during scheduled HVAC maintenance;

(4) Implement the use of general or local exhaust ventilation where housekeeping and maintenance activities involve use of equipment or products that could reasonably be expected to result in hazardous chemical or particulate exposures to employees working in other areas of the building or facility;

(5) Maintain relative humidity below 60% in buildings with mechanical cooling systems;

(6) The employer shall monitor carbon dioxide levels when routine maintanance under paragraph (d)(1) is done. When the carbon dioxide level exceeds 800 ppm, the employer shall check to make sure the HVAC system is operating as it should. If it is not, the employer shall take necessary steps to correct deficiencies if they exist.

(7) Assure that buildings without mechanical ventilation are maintained so that windows, doors, vents, stacks and other portals designed or used for natural ventilation are in operable condition;

(8) Assure that mechanical equipment rooms and any non-ducted air plenums or chases that transport air are

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maintained in a clean condition, hazardous substances are properly stored to prevent spillage, and asbestos, if friable, is encapsulated or removed so that it does not enter the air distribution system;

(9) Assure that inspections and maintenance of building systems are performed by or under the supervision of the designated person;

(10) Establish a written record of building system inspections and maintenance required to be performed under this section; and

(11) Assure that employees performing work on building systems are provided with and use appropriate personal protective equipment as prescribed in 29 CFR 1926, Subpart E, Personal Protective and Life Saving Equipment; 29 CFR 1926.52, Occupational Noise Exposure; 29 CFR 1910, Subpart I, Personal Protective Equipment; and 29 CFR 1910.95 Occupational Noise Exposure.

(12) Evaluate the need to perform alterations of the building systems to meet the minimum requirements specified in paragraph (d) of this section in response to employee complaints of building-related illnesses.

(13) Take such remedial measures as the evaluation shows to be necessary.

(e). Controls for specific contaminant sources.

(1) Tobacco smoke.

(i) In workplaces where the smoking of tobacco products is not prohibited, the employer shall establish designated smoking areas and permit smoking only in such areas;

(ii) The employer shall assure that designated smoking areas are enclosed and exhausted directly to the outside, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area;

(iii) The employer shall assure that cleaning and maintenance work in designated smoking areas is conducted only when no smoking is taking place;

(iv) The employer shall assure that employees are not required to enter designated smoking areas in the performance of normal work activities;

(v) The employer shall post signs clearly indicating areas that are designated smoking areas; and

(vi) The employer shall post signs that will clearly inform anyone entering the workplace that smoking is restricted to designated areas.

(vii) The employer shall prohibit smoking within designated smoking areas during any period that the exhaust ventilation system servicing that area is not properly operating.

(2) Other indoor air contaminants.

(i) The employer shall implement measures such as the relocation of air intakes and other pathways of

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building entry, where necessary, to restrict the entry of outdoor air contaminants such as vehicle exhaust fumes, into the building;

(ii) When general ventilation is inadequate to control air contaminants emitted from point sources within workspaces the employer shall implement other control measures such as local source capture exhaust ventilation or substitution.

(3) Microbial contamination.

(i) The employer shall control microbial contamination in the building by routinely inspecting for, and promptly repairing, water leaks that can promote growth of biologic agents;

(ii) The employer shall control microbial contamination in the building by promptly drying, replacing, removing, or cleaning damp or wet materials; and

(iii) The employer shall take measures to remove visible microbial contamination in ductwork, humidifiers, other HVAC and building system components, or on building surfaces when found during regular or emergency maintenance activities or during visual inspection.

(4) Use of cleaning and maintenance chemicals, pesticides, and other hazardous chemicals in the workplace.

(i) The employer shall assure that these chemicals are used and applied according to manufacturers' recommendations; and

(ii) The employer shall inform employees working in areas to be treated with potentially hazardous chemicals, at least within 24 hours prior to application, of the type of chemicals intended to be applied.

(f) Air quality during renovation and remodeling.

(1) General. During renovation or remodeling, the employer shall assure that work procedures and appropriate controls are utilized to minimize degradation of the indoor air quality of employees performing such activities and employees in other areas of the building.

(2) Work plan development.

(i) Before remodeling, renovation, or similar activities are begun the employer shall meet with the contractor or individual(s) performing the work and shall develop and implement a work plan designed to minimize entry of air contaminants to other areas of the building during and after performance of the work; and

(ii) The work plan shall consider all of the following where appropriate:

(A) Requirements of this standard.

(B) Implementation of means to assure that HVAC

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systems continue to function effectively during remodeling and renovation activities.
(C) Isolation or containment of work areas and appropriate negative pressure containment;
(D) Air contaminant suppression controls or auxiliary air filtration/cleaning.
(E) Controls to prevent air contaminant entry into the HVAC air distribution system.

(3) Prior notification of employees who work in the building.

(i) The employer shall notify employees at least 24 hours in advance, or promptly in emergency situations, of work to be performed on the building that may introduce air contaminants into their work area;
(ii) Notification shall include anticipated adverse impacts on indoor air quality or workplace conditions.

(g) Employee information and training.

(1) The employer shall provide training for maintenance workers and workers involved in building system operation and maintenance which shall include at least the following:

(i) Training in the use of personal protective equipment (PPE) needed in operating and maintaining building systems;
(ii) Training on how to maintain adequate ventilation of air contaminants generated during building cleaning and maintenance; and
(iii) Training of maintenance personnel on how to minimize adverse effects on indoor air quality during the use and disposal of chemicals and other agents.

(2) All employees shall be informed of:

(i) The contents of this standard and its appendices; and
(ii) Signs and symptoms associated with building-related illness and the requirement under subparagraphs (d)(12) and (d)(13) of this section directing the employer to evaluate the effectiveness of the HVAC system and to take remedial measures to the HVAC system if necessary, upon receipt of complaints from employees of building-related illness.

(3) Availability of training material. The employer shall make training materials developed in response to paragraph (g), including this standard and its appendices, available for inspection and copying by employees, designated employee representatives, the Director, and the Assistant Secretary.

(h) Recordkeeping. (1) Maintenance records.
The employer shall maintain inspection and maintenance records required to be established under paragraph (d), which shall include the specific remedial or maintenance actions taken, the name and affiliation of the individual performing the work, and the date of the inspection or maintenance activity.

(2) Written IAQ compliance program. The employer shall

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maintain the written compliance program and plan required to be established under paragraph (c) of this section.

(3) Employee complaints. The employer shall maintain a record of employee complaints of signs or symptoms that may be associated with building-related illness required to be established under paragraph (c)(3) of this section. These complaints shall be promptly transmitted to the designated person for resolution.

(4) Retention of records. The employer shall retain records required to be maintained under this section for at least the previous three years, except that records required to be maintained under paragraphs (h)(1) and (h)(2) of this section need not be retained for three years if rendered obsolete by the establishment and replacement of more recent records, or rendered irrelevant due to HVAC system replacement or redesign.

(5) Availability. The records required to be maintained by this paragraph shall be available on request to employees and their designated representative and the Assistant Secretary for examination and copying.

(6) Transfer of records. Whenever the employer ceases to do business, records that are required to be maintained by paragraph (h) of this section shall be provided to and retained by the successor employer.

(i) Dates--(1) Effective date. This section shall become effective [INSERT DATE 60 DAYS FROM PUBLICATION]

2. Start-up dates.

(i) Employers shall have implemented all provisions of this standard no later than one year from the effective date.

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MONDAY SEPTEMBER 19, 1994

8:00 A.M.

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P R O C E E D I N G S

MS. JOHNSTON: Good morning. Thank you for coming here so early. I'm Camille Johnston. I work in OSHA Public Affairs. This morning, Joe Dear, Assistant Secretary of Labor for Occupational Safety & Health will address OSHA's indoor air quality proposal.

We'll have an opening statement and then take questions.

MR. DEAR: Thanks, Camille. Good morning. Thanks again to all of you coming to this so early.

In an effort to secure a safe and healthful environment for America's workers, OSHA is about to begin a long series of public hearings on its proposed regulation concerning indoor air quality, including environmental tobacco smoke.

OSHA's mission is to save lives, prevent injuries and illnesses, and protect the health and safety of America's smokers.

We believe that the evidence presented to us to date supports our belief that poor indoor air quality poses a significant risk to the health of America's workers.

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Poor indoor air quality causes diseases such as lung cancer, heart disease, Legionnaires' disease, and other pulmonary diseases.

Regulating the quality of indoor air is a major enterprise which will have large and diverse consequences. We care a great deal about getting this right. As a catalyst to the accumulation of the expertise which must improve and inform our proposal, we have published a proposed rule to serve as a start point for our discussion.

Let me emphasize that this proposed regulation is a starting point not a fixed position. Yet, while we remain open and flexible as to the means of reducing the significant risks that poor indoor air quality presents, we intend to take decisive action to protect the health of workers who are exposed to poor indoor air quality and air contaminants on the job.

OSHA's decision to develop these proposed rules flows directly from our duty, our legislated responsibility, to protect the right of American workers, to safe and healthful working conditions.

This concern did not originate with this

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administration. OSHA was petitioned by three public health organizations in 1987 for an emergency temporary standard on environmental tobacco smoke.

OSHA published a request for information to the public in September 1991, requesting public comment on the degree of risk that they perceived with respect to poor indoor air quality.

Over 1200 comments were received to that request, and it formed the basis of the proposed rule which we issued early this year.

In 1992, the AFL-CIO petitioned the OSHA for a rule on indoor air quality. OSHA was also sued in late 1992 by the organizations that submitted the petitions in 1987, suggesting that the Agency had engaged in unreasonable delay in its development of proposal.

Finally, former Labor Secretary Martin instructed OSHA to begin development of a proposed regulation in early 1993. OSHA proposed this proposed rule in April 1994.

Through the public hearing process and the consideration of the numerous comments we have received thus far, we intend to improve our proposal.

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OSHA believes that the data submitted to the record and other evidence support the conclusion that air contaminants and other air quality factors present a significant risk to employees working in indoor environments, and that compliance with the provision set forth in the proposal will substantially reduce that risk.

Secondhand tobacco smoke contains over 4,000 chemical compounds, including carbon monoxide, formaldehyde, ammonia, benzene and hydrogen cyanide.

If the source of these airborne chemicals were production machinery or raw materials, ironically, few would question the legitimacy or even the urgency of establishing rules to protect workers from exposure.

The fact that this particular airborne toxin originates with people legitimately exercising their right to smoke is surely significant, and throughout this process we must take care not to needlessly infringe on the rights of people who choose to smoke.

But in a workplace setting, for OSHA, the more crucial fact is that, at present, many millions of people are exposed to smoke unwillingly.

Of the more than 70 million employees working

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indoors, OSHA estimates that 21 million are exposed to poor indoor air quality and millions of others are exposed to environmental tobacco smoke.

This proposal would require employers to write and implement indoor air quality compliance plans, including inspection and maintenance of building systems, such as heating, ventilation, and air conditioning systems, to assure that they are functioning as designed.

The proposal would not require all building owners and employers to install new ventilation systems.

In buildings where smoking is not prohibited by employers or local requirements the proposal would require the designated smoking areas which are separate, in closed rooms, exhausted directly to the outside.

Other proposed provisions we require employers to maintain healthy air quality during renovation, remodeling, and similar activities. At this point, I want to clarify that OSHA is not proposing to regulate smoking in private homes or private vehicles.

The objective of this proposed rule is to assure that workers have clean air to breath.

The proposal enables employers to protect the

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rights of smokers to smoke and nonsmokers to not smoke. It gives every workplace the choice between having workers smoke outside or in separately-ventilated rooms and gives every nonsmoker the right to be free from involuntary exposure to environmental tobacco smoke.

This proposed rule would accommodate the rights of smokers and nonsmokers. Let me emphasize again. We are not just discussing an environmental tobacco smoke rule.

We are dealing with a comprehensive proposal to protect the right of workers to breath clean air in all its forms in the workplace. Tobacco smoke is only one of many airborne hazards we intend to address with this proposal.

These hearings are the beginning of a continuing conversation on how best to protect workers.

I'll be happy to take questions.

QUESTION: Do you have a time frame, please, both for the hearings, the number of witnesses, the sort of mechanics of what is actually going to be happening, as well as I saw in a Post article that somebody speculated it could be as long as 10 years before you issue a final

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ruling on it?

MR. DEAR: The hearing starts tomorrow. Over 200 witnesses are scheduled to appear, and that will take the hearings almost continuously through December 5th of this year, so there are 10 scheduled weeks of hearings, which is, by far, the largest amount of public comment we've taken.

It may run farther than that if others during this time indicate a willingness to speak.

We will allow all those who have something to contribute to say. It is very difficult to speculate how long it will take. Basically, we'll take as long as we need to get the proposal and this rule done right.

QUESTION: Is 10 years an unheard of amount of time?

MR. DEAR: OSHA health standards have taken quite a long time, depending on how long the agency took to solicit public comment, the amount of litigation associated with the proposals.

In this case, it also depends on when you start the clock ticking. You start it when the request for information was issued in 1991, but it's taken up to 17

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years for some OSHA standards to take effect, from beginning of the process to actual implementation to protect workers.

QUESTION: What will be the basis of your final decision? Will it be science, will it be public opinion, political pressure, all of the above? How do you ultimately decide what to do?

MR. DEAR: The term "significant risk" is extremely important. We must demonstrate that. We must also demonstrate that that significant risk can be reduced substantially. We'll have to demonstrate that it is both economically and technically feasible to make that substantial reduction and risk, and the determination of the final proposal will have to be based on the entire record, a substantial consideration of the entire record, taken as a whole.

It's a very high standard; it's an exacting standard, and that's quite appropriate.

Yes?

QUESTION: What do you think about the FDA taking a decision that nicotine or the components of tobacco smoke are essentially a drug? What impact would

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you seeing that have on the hearings, whatever you're hearing it for (inaudible).

MR. DEAR: OSHA's workplace standards would still apply in the workplace. The determination of FDA's jurisdiction could raise issues with respect to any overlap, and that would be subject to discussion between the two agencies.

QUESTION: Would it be fair to say that whatever you did, you would wind up in court (inaudible)?

MR. DEAR: OSHA's adopted 25 health standards in its history and been sued 24 times. I'd say it's a safe prediction to assume this one will end up in court at some point.

QUESTION: Would you please explain for me, if I employ a manager, a live-in man; if I have a maid who maybe comes in once a week or something like that; if I pay social security taxes, et cetera, et cetera, et cetera, and are considered an employer by the federal government with the taxes, why would I not be regulated by this act, in so far as my employees are concerned, in my house?

MR. DEAR: We don't intend to regulate smoking,

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and this proposal does not permit regulation of smoking in private home or private vehicles. The existing OSHA regulation already exempts domestic employees employed in private homes. This is a logical extension and continuation of that policy.

QUESTION: There is no OSHA regulation for somebody who might work for me in my house?

MR. DEAR: No, not as a domestic employee.

QUESTION: What about a home office? People working out of their homes, as far as (inaudible), where do you draw the line as to what is a predefined (inaudible) and what is not?

MR. DEAR: We drew the line at saying that private homes are not subject to this regulation, that we're not going to regulate, attempt to regulate, and we're not going to do anything about the right of individuals to smoke in their own homes.

QUESTION: Could you give us an idea of how extraordinary this hearing is compared to what OSHA has gone to for other regulations?

MR. DEAR: OSHA received more than 100,000 comments from the public at the time the docket closed.

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That exceeds by several orders of magnitude any other response that we've received from the public to a proposed regulation. The number of witnesses scheduled to appear will also set a record as will the duration of the public hearing.

QUESTION: Do you know how long the second longest hearing was?

MR. DEAR: In terms of records, documents received, the blood borne pathogen standard, produced about 3,000 comments for the record.

QUESTION: This is --

MR. DEAR: Orders magnitude.

QUESTION: 33 times --

MR. DEAR: I'll let you do the math, but it's a lot of comments.

QUESTION: What about the 24 out of 25 lawsuits that have been filed against your past -- did you say health --

MR. DEAR: Health standards. Yes.

QUESTION: How many of those are pending? How many did you lose, how many did you win?

MR. DEAR: I'll have to gt the win/loss record,

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but a number of these decisions on health are extremely important, because they form the body of interpretation which this proposal will be judged. The term demonstration of significant risk, reduction of the significant risk, substantially, determination of economic and technical feasibility are all of the products of decisions, like the benzene decision in 1980 or the cotton dust decision in 1981.

By and large, the decisions of the courts have tended to push OSHA a little further in terms of its duty to exercise its legal mandate to protect the health or safety of America's workers.

I can think now of one major pending case concerning the lock out/tag out standard, which is a safety standard which is still before the courts, but we have a solicitor here (inaudible).

QUESTION: Why is this proposed action being taken now?

MR. DEAR: Why is this action being taken now?

QUESTION: Or what precipitated it? (inaudible) long time.

MR. DEAR: Well, as I mentioned, the issue of

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environmental tobacco smoke and indoor air quality was taken up by previous administrations, and Secretary Martin ordered OSHA to begin rule development in January 1993.

We've been petitioned under the rulemaking procedure by health advocates to take action in this area. We've been petitioned by the AFL-CIO to take action in this area, and there is an accumulating body of evidence which persuaded that poor indoor air quality poses a significant risk to the health of America's workers. That's OSHA's job.

This is an issue we need to step up and address, and we've done so by putting this proposal before the public for its comment.

QUESTION: I just need you to clarify. (inaudible) between 2,000 and 13,000 deaths from heart disease. Is that to say that OSHA thinks those (inaudible) are related, a direct caused by ETS?

MR. DEAR: Environmental tobacco smoke is the significant risk which produces those estimates of lung cancer, heart disease, and other heart conditions, yes.

QUESTION: If Congressman Waxman's bill were to pass, does substantially what your proposed rule would do,

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would that have an impact on the process, would render your rule moot?

MR. DEAR: No. Again, these are regulations that are being adopted under the Occupational Safety and Health Act through an administrative process. Right now, OSHA is the only governmental organization with authority, to regulate in this area, and it is this rulemaking process which is necessary for us to establish a standard to protect the health of America's workers.

QUESTION: Do you have any idea how you would support such a standard, so (inaudible)? I mean, you're not going to have smoking (inaudible) running around, are you?

MR. DEAR: All safety and health law depends on voluntary compliance, in large part, for its success. We've seen American businesses already institute no smoking or limitations on smoking. That's being successfully done now. There's no reason to believe that that won't continue to be the case with this proposal.

QUESTION: But will you have a mechanism in place, distinctly for this kind of (inaudible)?

MR. DEAR: No. We treat complaints of worker

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concern about health and safety through a process which determines the degree of the hazard and, thus, determines the speed of response.

In cases of imminent danger, like a trench which is about to collapse, we try to get out to the worksite immediately.

In cases which do not pose imminent danger, we try to categorize the response according to the degree of the risk.

QUESTION: Would this be the biggest challenge you've ever faced from the regulatory perspective in open debates?

MR. DEAR: As a regulation, it's certainly going to be interesting because of the size of the record, that we're going to have to make a substantial consideration of before we reach a decision. It's going to be a large amount of work.

QUESTION: Could you explain how this particular regulation will go beyond existing laws, regulations, or whatever, that restricted smoking evidence is?

MR. DEAR: It applies to -- with respect to

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environmental tobacco smoke -- it applies, as proposed, to virtually all workplaces in the country. That means some 6 million workplaces would be subject to this regulation.

It would give employers the choice of separately ventilating a room to permit smoking indoor or to not permit indoor smoking at all.

With respect to indoor air quality, it would require employers to develop and implement an indoor air quality compliance plan to enable them to address and control hazards associated with other airborne toxic chemicals. That provision would apply to non-industrial workplaces, so it's scope is somewhat less -- 4 million -- but still quite extensive.

QUESTION: We still see a lot of people standing outside of buildings having a smoke because they can't smoke inside. So what is this going to do to their lives or to their workplaces that will be different from the way it is now?

MR. DEAR: Nothing, basically. If the employer already has a policy and smoking is not permitted, and a growing number of private and public organizations have already selected that choice, this rule will have no

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impact at all.

QUESTION: That is a choice, then, not any kind of a legal or regulatory mandate?

MR. DEAR: There's choice in this proposal. It's not a ban on smoking. It just says that we're going to accommodate the rights of smokers and nonsmokers.

QUESTION: Do you know the percentage that currently now have in the workplaces a no smoking policy in place? Do you have any idea?

MR. DEAR: One estimate is that 60 percent of America's workers are employed by employers who have some restriction, either an outright prohibition on smoking or fundamental restriction of the ability to smoke on the job.

QUESTION: OSHA is really a hodgepodge of regulation between the federal programs, state programs, mixed federal-state programs. It's very confusing. Are there any loopholes in here where a state that, for example, runs its own program could somehow -- like Virginia or North Carolina where tobacco is king -- could somehow wiggle free from the strictness of the proposed regulation, if the proposed regulation would become final?

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MR. DEAR: The Occupational Safety & Health Program in the United States is a joint federal-state operation. Federal OSHA enforces safety and health regulations in 27 states. 23 states operate their own safety and health programs.

A condition of state authority to operate and enforce their own safety and health programs, is that those programs be at least as effective as the federal program. That means that, with respect to health standards or safety standards, the standards those states adopt, must be at least as protective as the federal standards. They may go beyond, but they may not do less.

This does permit states to experiment with innovative approaches to safety and health, so there may, indeed, be variation among the states as they address this issue.

But no state, after OSHA finally adopts a standard on indoor air quality, could adopt a standard which was less protective than the federal standard.

QUESTION: Can you think of any creative ways? I mean, you're proposing either go outside or a separate ventilated area. Can you think of other creative ways?

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Did you guys think of other creative ways that you have not put into this proposed regulation?

MR. DEAR: We put a proposal on the table in April. We're having these public hearings to see if, indeed, the public has better ideas to inform our decisions. I -- we -- really look forward to this process to see if such ideas emerge.

QUESTION: Who will sit in governance over the hearing, you?

MR. DEAR: The hearing is conducted by an administrative law judge, which is independent of OSHA, and who conducts the hearing and builds the record, which will become the basis for a decision and recommendation by me in consideration by the Secretary of Labor.

QUESTION: If you can explain it, does he make the decision, does he just hold the hearing to make sure that everybody gets their chance to speak? Could you be a little more specific about it?

MR. DEAR: The administrative law judge conducts the hearing, does not make any conclusions or findings of fact or law. That is the responsibility of OSHA.

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QUESTION: Are you going to sit in that for 10 straight weeks, or do you go in and out and look at his final -- does he have to sum up anything for you, or do you just go through 10 weeks of transcripts?

MR. DEAR: Our staff will be responsible for reviewing the entire record -- all of the documents submitted to date and all of those to come in a public hearing. On that basis, again, which is this determination of all of the information on the record, taken as a whole, is required for us before we can adopt a final rule.

QUESTION: Who will issue the final rule -- you, the Secretary of Labor, or the President -- who issues the ruling?

MR. DEAR: The rule is promulgated by the Occupational Safety & Health Administration. I report to the Secretary of Labor. I will make a recommendation to him.

QUESTION: Basically, he chairs OSHA (inaudible)?

MR. DEAR: He's my boss.

[Laughter]

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QUESTION: And the President's his boss, ultimately. So it stops at the Secretary of Labor; it doesn't go up to the President?

MR. DEAR: In terms of the administrative process, in order to promulgate a rule, it's the Secretary of Labor whose permission I need.

QUESTION: As a factual matter in this case, couldn't something this far-reaching go to the White House have a general effect?

MR. DEAR: As a routine matter, all significant rules by OSHA are reviewed by the Office of Management and Budget's Office of Information and Regulatory Affairs. They reviewed the proposed regulation, and they will review the final regulation, pursuant to the President's Executive Order and Agency rulemaking.

QUESTION: There were reports that OSHA has received threatening mail, rather emotional comments. Could you enlighten us a bit about some of the correspondence you've gotten? Has it been retained at OSHA staff? Is there some sort of climate for intimidation that somebody is trying to create here?

MR. DEAR: We got a few letters that were over

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the line, 12 out of the 100,000, in terms of threat.

A lot of the letters we received were from people who thought we were going to ban smoking, and they didn't want us to do that, and that's not what we proposed, so they were overreacting based on a concern that wasn't well founded -- 12 letters out of 100,000. They certainly bothered the staff, but I don't think it's --.

QUESTION: Did you make any effort to track those down or --

MR. DEAR: Some were referred to the FBI for action, yes.

QUESTION: Any --

MR. DEAR: I'm not aware of any subsequent action.

QUESTION: How many were referred to the FBI?

MR. DEAR: Those that had -- of those 12, those that had addresses, so it was some identification.

QUESTION: (inaudible) threats?

MR. DEAR: They were interpreted that way.

QUESTION: How many were pro and how many were anti-regulation?

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MR. DEAR: The request for information, about 75 percent were supportive of regulation. The response to the proposal, the majority of the responses were more negative as to the approach, in terms of number.

QUESTION: I don't understand (inaudible).

MR. DEAR: We got more negative comments on the proposed rule than we did on the request for information.

QUESTION: What's the 75 percent? I don't understand.

MR. DEAR: In September 1991, we issued a request for information, and that RFI is important because it was the basis for the development of the proposed regulation which we published in April. When we published the April proposal, we got the 100,000 responses, and more of those were negative than positive.

QUESTION: (inaudible) fraction?

MR. DEAR: No. I don't know the exact breakdown.

QUESTION: Of the 100,000, how many do you think, roughly speaking, were addressing the smoking issue versus the rest of the indoor quality issue?

MR. DEAR: More of the comments dealt with the

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proposal on environmental tobacco smoke, but we received significant and substantial comment on the indoor air quality proposal.

QUESTION: Several thousand on the rest of it.

Of those that did refer to secondhand tobacco, could you tell if there had been any kind of organized campaign, similar letters, similar writings, anything like that?

MR. DEAR: Yes. It did appear that there had been some organizational assistance for some of the letters we received.

QUESTION: Did they all come from a particular part of the country, shall we say?

MR. DEAR: I don't know how to answer that.

QUESTION: Is there any room for flexibility, as far as bars or restaurants, or could workplaces deem themselves entirely smoking areas so there would be no non-smoking areas?

MR. DEAR: There's lots of room for flexibility. Where we're firm is our belief that a significant risk exists to worker's health because of poor indoor air quality.

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One of the main purposes of the public hearing is to get all of the information in front of us and to listen and consider it carefully. It's quite possible, it's happened before, that whatever final proposal emerges, if one emerges, that it will be different from the original proposal. That's what a public hearing is for.

QUESTION: So it might exempt certain types of businesses? Is that possible?

MR. DEAR: All of the issues that are important to OSHA rulemaking -- the demonstration of significant risk, the development and means to substantially reduce that risk in considerations of economic and technical feasibility are open in this public hearing process, and we are looking for information, comment, evidence from the public to help inform a final decision.

QUESTION: I just don't understand your answer there. I really don't.

I mean, could a business conceivably declare itself totally smoking and allowing anybody at any time to smoke? Really, I think that was what I thought she was asking, and I didn't hear an answer to that.

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MR. DEAR: As proposed, the choice is smoking in separately-ventilated rooms, exhausted to the outside, or smoking outside only.

The question was, could the proposal be modified, with some specific suggestion with respect to bars and restaurants.

The answer was: We're going to get comments on all aspects of that in this public hearing process and that careful consideration of all of that information must and will be used to form whatever final determination we make.

QUESTION: Let me ask you this. Can you envision a rule that would expose one class of worker -- and I think in addressing her question this would be to specifically say bar/waiters -- to a higher level of secondhand smoke, or a level of secondhand smoke, that you're not allowing other nonsmokers (inaudible) to be exposed to.

MR. DEAR: That's a fascinating question. I mean, that's one of the key policy questions that we'll have to address. We're going to address it by using information that we have now and that which we get in the

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public hearing to make a final decision.

It would be --

QUESTION: If two classes of people -- one who are allowed to be exposed to a higher degree of health risk and your 25 health rulings over these past years and another group who are not allowed to be exposed to essentially the same health risks?

MR. DEAR: Sure. We've adopted different proposals as to how workers can be protected from levels of exposure, due to significant risk, compare engineering controls in certain workplaces with personal protected equipment in other workplaces.

QUESTION: Are (inaudible) workers coming to you (inaudible).

MR. DEAR: They are in this proposed rule.

QUESTION: Are you suggesting that you have any evidence that, in fact, bartenders or waiters or others in restaurants have a substantially higher risk to secondhand smoke than patrons in (inaudible).

MR. DEAR: Yes. Papers have been submitted from scientific journals which indicate higher levels of risk to lung cancer for employees in bars and restaurants.

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QUESTION: Than patrons?

MR. DEAR: Than the general public.

QUESTION: So this would ban smoking or separate them with the smoking area in a bar/restaurant and bar?

MR. DEAR: As proposed.

QUESTION: I'm getting a little bit confused here. Even a separate ventilated area in a bar, for the worker who goes in there to serve the patrons, is still being exposed to the smoke.

I mean, we're not talking about protecting the patrons, are we; we're talking about protecting the workers?

MR. DEAR: That's correct. We're talking about protecting the worker.

QUESTION: And if this room is for smokers in the restaurant, and that room over there is for non-smokers, I'm a waiter, and as soon as I walk in here, I'm exposing myself to the people that are smoking, am I not? And the separate ventilation doesn't help me because the room still has smoke in it?

MR. DEAR: Our regulation does not deal with

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public patronizing establishments and what they do. OSHA's authority is limited to the protection of workers in their employment.

I suppose the regulation says that an employer, a bar owner, has a choice of a separately ventilated room for smokers, or no smoking at all. What adjustment is made from that, is going to be one of the issues that will be considered in the hearing.

QUESTION: But he can send his employee --

MR. DEAR: No.

QUESTION: -- into that room?

MR. DEAR: No, he can't.

QUESTION: So that separate room, you can only, in effect -- in the real world, he would only send in workers who smoke --

MR. DEAR: That's what the proposal says. That's what the --

QUESTION: -- to service the patrons who choose to smoke?

MR. DEAR: You can't involuntarily expose workers to environmental tobacco smoke in a work setting. This has interesting questions for owners and operators of

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bars and restaurants.

QUESTION: You could use a robot.

MR. DEAR: Never underestimate the entrepreneurial creativity of American business people.

QUESTION: When did the public opinion period start?

MR. DEAR: It opened in April. It was originally expected to end in July. It was extended into August. There will be a post-hearing comment period that will also be open to the public to submit comments for the record.

QUESTION: Do you know the date of that?

MR. DEAR: Can we have a date on that?

QUESTION: When do you expect -- your most optimistic, when do you expect (inaudible).

MR. DEAR: Well, we'll take the time required to do this right.

QUESTION: Next year?

MR. DEAR: No. We need the time to do it right, and it's not -- it's risky to give a prediction like that.

QUESTION: Does it seem safe to say that 10

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years would be reasonable, or did you not say that?

MR. DEAR: I did not say that.

QUESTION: Is there an average for your 25 rulings? You said one can take, or has taken, as long as 17 years. Does it take on average at least 4, 5, 6 years?

MR. DEAR: It has, yes. Health standards, in particular, have taken something on the order of a decade to get through.

QUESTION: Do you think that's --

MR. DEAR: You need to know, I think part of that's a management issue, not an issue that the process doesn't permit the faster addressing of serious health hazards to American workers.

QUESTION: Past management or past --

MR. DEAR: I think a little reinvention will help get standards out -- better standards out -- more quickly.

QUESTION: With your all management, do you expect the time (inaudible) extend past November '96?

MR. DEAR: I can't make a prediction as to time. Really, we are firm that we've got to do this right because we know, with almost virtual certainty, we'll end

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up in court, and it's more important to do it right than it is to try to set an artificial deadline and meet it.

MS. JOHNSTON: Thank you very much.

MR. DEAR: Thank you.

(Termination of press conference.)

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PRESS CONFERENCE

COALITION ON SAFETY OR HEALTH

MONDAY, SEPTEMBER 19, 1994

8:00 A.M.

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Source: https://www.industrydocuments.ucsf.edu/docs/zzwl0000

P R O C E E D I N G S

MS. DuMELLE: Good morning. I'm Fran DuMelle. I'm the deputy managing director for the American Lung Association. We are joined this morning by the American Heart Association and American Cancer Society, united as the Coalition on Smoking or Health to express our strong support for the Department of Labor's proposal to protect workers from the health hazards of exposure to environmental tobacco smoke.

Support for such public policy initiatives has changed dramatically during the last decade. In January of 1993, the Environmental Protection Agency declared that environmental tobacco smoke is a Group A, known human carcinogen.

The Occupational Safety and Health Administration will continue to landmark process of protecting this nation's workforce from the health effects of environmental tobacco smoke.

OSHA's action demonstrates a new commitment to perfecting the health of American workers, which is the very essence of their statutory mission.

Nonsmokers who have to breath environmental

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tobacco smoke on the job are 34 percent more likely to develop lung cancer than those that are in a smoke free environment, and this is an intolerable risk.

Unfortunately, in seeking workplace protections from exposure to environmental tobacco smoke, the American worker faces an uphill battle against a very well financed tobacco industry.

And, remember, cigarette smoking has nothing to do with anything, any one of us, the job we do everyday. It's simply not necessary in our work environment. The only creatures on earth today who actually smoke for a living are laboratory rats and mice.

You will hear considerable and creative interpretation of what OSHA can and cannot do by the tobacco industry. At the top of the list, they contend that this action is not within the jurisdiction of OSHA. The truth is that protecting workers' health is the very heart of OSHA's mandate.

While no one questions OSHA's responsibility to regulate asbestos, also a known human carcinogen, an issue is being made for environmental tobacco smoke.

You will hear from the tobacco industry that

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the health studies are flawed. In your press kit today is a statement from a noted epidemiologist from the Harvard School of Public Health, refuting many of the claims of the industry's paid scientists.

You will also hear this morning from individuals whose health has been destroyed as a result of exposure to environmental tobacco smoke.

The tobacco companies also declare that the proposed OSHA action imposes unfair and unnecessary regulatory burden on business and industry, yet hundreds of businesses have already gone smoke free voluntarily. The American Lung Association's experience in helping businesses go smoke free has varied at the workforces that you find across the nation.

We have worked with the traditional nine to five employer, we have worked with multiple shifts. We have been in office situations and in heavy manufacturing plants. We have done retail stores and international unions. We have even helped oil rigs go smoke free.

Today you will hear what the American Lung Association and its partners in the Coalition on Smoking or Health know to be true. American business and industry

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are going free in record numbers.

You will also hear from the tobacco industry that all we need is accommodation, simple courtesy between smokers and non-smokers. This approach is no longer acceptable.

Recent public opinion survey showed that 2 and 3 Americans who have never smoked, regularly worry that exposure to environmental tobacco smoke can cause serious health problems. The same poll from March of this year found that 54 percent of Americans favor a complete ban on smoking in all public places.

The American Lung Association's own poll from 1992, conducted before EPA's risk assessment, found that 94 percent of Americans support banning while restricting smoking in the workplace.

As further evidence of the widespread support, today we are releasing a statement circulated by the American Public Health Association, signed by dozens of groups, supporting OSHA's proposed actions.

It is time for this nation's public policy makers to catch up with science and with public opinion.

Tobacco industry lobbyists are pulling out all

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the stops on this one. Along with a long list of other airborne pollutants, environmental tobacco smoke is causing illness and death in our workforce. It is time for OSHA to do its job.

Joining the Coalition on Smoking or Health today are Dr. Alfred Munzer, past president of the American Lung Association; Dr. Robert Zullo, medical director for Merck and Company, a smoke-free company, with 16,000 employees, working at 24 sites throughout the nation; John Penney, co-founder of corporate health policies and former director of the Office on Smoking and Health.

Our other speakers are Mina Mohajer and Judy Tucker.

Also joining us today and available for questions after the news conference is Tony Ford, general manager, from the Carlisle Grand Cafe, in Arlington, Virginia, a smoke-free restaurant.

Dr. Munzer.

DR. MUNZER: Good morning. I'm Alfred Munzer, past president of the American Lung Association and Director of Critical Care and Pulmonary Hospital at

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Washington Adventist Hospital, here in Takoma Park, Maryland, where I specialize in the treatment of lung disease.

The Coalition on Smoking or Health wholeheartedly supports the Occupational Safety and Health Administration's effort to ensure that all workers breath air free of environmental tobacco smoke.

The organizations that make up the Coalition sincerely believe that everyone should have the freedom to decide whether they want to smoke. They should not be forced to smoke involuntarily and place their own health at risk simply because they want to work.

We are pleased that state and local governments and many private organizations and businesses have eliminated or limited smoking in their facilities. While these efforts are important, they provide inconsistent protection at best.

Coverage is extensive in some workplaces and quite minimal in others. A more comprehensive workplace smoking policy, such as the one proposed in the OSHA proposal, is needed.

Environmental tobacco smoke, or ETS, is a cause

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of great discomfort for many people in the workplace and triggers incapacitating health problems in others. For thousands of people each year, it can even lead to death.

Despite what the tobacco industry will tell you at its news conference later this morning, this is not an issue of smokers' rights. It is an issue of every worker's right to be protected from a proven health hazard.

The tobacco industry will try to bury this fact by repackaging its longstanding campaign of misinformation, scare tactics, and questionable interpretation of the science behind the efforts to protect people from environmental tobacco smoke. Their goal is to plant seeds of doubt and confuse the public.

They believe that if they repeat themselves often enough and spend billions of dollars on slick public relations and advertising campaigns, their words will miraculously turn to truth.

As a pulmonary physician, I, all to often, see the real truth behind their greed and profit margins. I commonly treat men and women seeking a miracle cure for end stage lung cancer and emphysema, or in help in coping

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with the symptoms of chronic coughing and shortness of breath the come with asthma. These are patients who are extremely vulnerable to environmental tobacco smoke.

As their medical specialist, I strongly support effective measures that will guarantee my patients a healthier environment in which to live and work.

In this country, 419,000 people die each year because they smoke, either because they are addicted to nicotine or because they have made a conscious decision to smoke, despite the well-known risks. This number is huge and tragic, and it represents the enormous cost to society in more than just dollars and cents.

Equally tragic but far more disturbing are the 53,000 people who choose not to smoke but who die anyway each year because they had to breath an environment contaminated by tobacco smoke by other people's cigarettes.

These involuntary smokers die the same way many smokers do, from heart disease, from lung cancer, and from emphysema; but, unlike smokers, they have little choice because many of them are required to work in smoke-filled offices, restaurants, and bars -- 53,000 dead Americans

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each year, more than the number who die each year in automobile accidents, nearly as many as the 58,191 Americans who died in Vietnam between 1959 and 1975.

In addition to the 53,000 dead, thousands more suffer everyday from asthma and other chronic respiratory ailments made worse by environmental tobacco smoke.

The federal government regulates hundreds of cancer-causing substances in the workplace, from pesticides to radiation levels. However, cancer deaths from exposure to environmental tobacco smoke exceed cancer deaths caused by the combination of all other cancer-causing substances, regulated by the federal government.

Yet, our government has done far too little to protect workers from the effects of environmental tobacco smoke, in part, because of well financed campaigns of misinformation by the all-too powerful tobacco industry.

The scientific case for federal action to protect workers from exposure to environmental tobacco smoke is compelling. Over the years, the evidence on these adverse health effects have become clearer. Pregnant women exposed to environmental tobacco smoke suffer increased risk of having low birth weight babies.

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Exposed health adults have an increased risk of heart disease, lung cancer, cervical cancer, and emphysema.

This summer, the Journal of the American Medical Association reported that the risk of lung cancer for female non-smokers was 39 percent higher among those who had been exposed at work to other people's smoke than in those who had not had this exposure.

In restaurants, the most heavily exposed workers inhale as much benzpyrene, a very powerful carcinogen, as people who actively smoke 1 to 1-1/2 packs of cigarettes per day.

In California, waitresses have the highest death rate of any female occupational group. They have 4 times higher rate of death from lung cancer and a 2-1/2 times higher rate of death from heart disease than other female workers.

Flight attendance, as a category of workers, long faced unhealthy working conditions when smoking was permitted in airplane cabins. They argued that they and their passengers should be protected, after a lot of urging by the Coalition on Smoking or Health and other

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like-minded organizations, by banning smoking on domestic flights. We are now working to extend that ban to international flights.

OSHA's proposed rule does not go that far. It does not ban smoking, but it would require that employers assure clean air for their workers, by either prohibiting smoking in the workplace or by providing a separately-ventilated space for employees who continue to want to smoke.

Tobacco industry lobbyists are campaigning in ernest to kill this latest attempt to protect the health of millions of Americans. It won't work. The evidence that environmental tobacco smoke makes people sick and can kill them is overwhelming. Let's let OSHA fulfill its mission and protect the right of Americans to work in a safe and healthy environment.

MS. DuMELLE: Thank you, Dr. Munzer.

Next we'll have Mina Mohajer.

MS. MOHAJER: Good morning. I'm Mina Mohajer, and I'm here today to share my experiences with environmental tobacco smoke in the workplace.

Let me begin by saying that the impact of

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environmental tobacco smoke and human health is not just an occasional occurrence, but etiology that has affected numerous days in my life.

I hope my remarks today will serve as yet another testimonial for the need for the nation's workplace is smoke free.

In 1983, I was diagnosed with asthma. My treatment for this condition began immediately. For the next several years I became increasingly aware of environments that aggravated my asthma or triggered attacks.

A smoke-filled room (inaudible) ventilated smoking sections and rooms in which smoke had been present over the past several days were among the number of the areas which I quickly learned I should avoid. Later I found that walking away from a smoke environment would not always be an option open to me, especially if a smoking environment was the seat of my employment.

Surely you can always choose a different restaurant in which to eat or choose another place to shop, if no tobacco smoke is present, however, jobs are necessary in this country, and you can't pick and choose

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or walk away from them if you intend to survive.

A chronic asthmatic, like myself, working in a smoke environment creates a tremendous dilemma: The choice of jobs or your health. I do not believe that these are kinds of choices our government and our nation's employers would want to force out a normally productive employee.

However, the reality of this nation was awfully chilling for me as I was forced to leave my job because my health infringed on the rights of the smokers in the building.

After several efforts to compromise on the issue of the smoking in my workplace, an agreement even accepted by the smokers in the office, my employer still denied me and other respiratory sufferers the opportunity to work in a smoke-free environment.

When I asked about my rights and of those of others, my employer told me to love it or leave it.

Absent for my health and for my commitment to this nation to be a responsible and productive employee, I left my job and was lucky to have found another employment opportunity, but I wonder how many other asthmatics will

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have the same luxury as I had.

I'm hoping that the opposed regulation under review by the Department of Labor will be a new beginning for those like myself who are adversely affected by tobacco smoke, particularly that to which we are exposed in the workplace.

Had they been in place back in 1987 when I first encountered the hardship of working in a smoking environment, my career may have taken a different path.

I encourage the Department of Labor in its efforts to preserve the health and safety of American workers to bear in mind the rights of nonsmokers and especially sufferers such as myself.

Thank you.

QUESTION: Could you tell where you

MS. MOHAJER: I live in Virginia. Right now, I now work for Washington Post, but the place that they kind of fired me was Casee Corporation in Old Town, Alexandria.

QUESTION: What was that again?

MS. MOHAJER: It was a government subcontractor and I was their consultant purchasing for the department -- purchasing department.

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QUESTION: What was the name again?

MS. MOHAJER: Casee Corporation -- C-a-s-e-e -- Corporation. C-a-s-e-e -- Casee Corporation.

QUESTION: (inaudible)

MS. MOHAJER: In Washington Street, in Alexandria, Virginia.

QUESTION: (Inaudible).

MS. MOHAJER: I live in Alexandria.

MS. DuMELLE: Thank you, Mina.

MS. MOHAJER: Thank you.

MS. DuMELLE: Our next speaker is Judy Tucker.

MS. TUCKER: Good morning. I'm Judy Tucker, a pre-pharmacy student at the University of Maryland, and I suffer from asthma. I'm also employed with a professional association in downtown Washington, in which smoking is permitted.

I wanted to take this opportunity to share with you why the Department of Labor's proposed regulations on smoking in the workplace are so critical to persons such as myself.

I didn't know the impact exposure to environmental tobacco smoke would have on my health and

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that of my family, especially since I grew up in a smoking household. At times, it appeared that my upper respiratory problems were a common occurrence for me and that they would never cease.

For as long as I could remember, my relatives viewed me as the sickly one, and most of my physicians viewed my condition as the result of allergies. Even in my adult life, when I was making an average two and three hospital trips per week to seek medical assistance and treatment for these problems, no one ever made the connection between my allergies, exasperated respiratory problems and recent encounters with tobacco smoke.

I was formally diagnosed with asthma in 1986. That marked the beginning of my understanding of the impact smoking has had on my health.

Though I began to take necessary precautions to ward off asthma attacks, I knew that eliminating smoke from my environment was the most effective maneuver I could make. I quickly learned, however, that having control over every environment that I encountered would be an impossibility, especially if it is the primary source of my livelihood.

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I reached the unfortunate reality that, as an asthmatic employee in a smoking environment, I was forced to make a very difficult choice, the choice between a job or a career opportunity I sought or desired, and that of my continued health and my ability to carry on without constant medical attention.

I am not here today to condemn smokers. That's a personal freedom. But when it begins to infringe upon my health and productivity and that of other employees around me, then smoking no longer becomes a freedom but a threat of human health.

I will admit I have worked in so-called smoking offices and encountered positive reactions and support regarding my condition. Past co-workers of mine have been kind enough to ask if they could smoke in my presence and have respected my request to refrain from doing so. However, I can cite my current work environment as a prime example of the impact of smoking on the workplace.

What I have observed has been smokers who know and understand my reaction to tobacco smoke but choose to smoke in the office, cheating me and a fellow employee out of a healthier work relationship because they choose to

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disregard our building smoke-free policy.

I know that sometimes life does not always provide you choices and that sacrifices are often imminent, however, it seems plainly unfair that persons with respiratory conditions or severely reactions to tobacco smoke should be placed in this kind of position to accommodate the rights of smokers.

I am quite excited about the prospects of having to work in a smoking environment in the future, particularly in light of the impact smoking environments have on my health and productivity.

I do hope that the Department of Labor will give serious consideration to the concerns of able-bodied workers, such as myself, upon reaching a final decision about its smoking policy. If nothing else, they should at least consider my health and safety as a worker in this country.

Thank you.

QUESTION: Where are you working?

MS. TUCKER: I work for an association, but we are leasing space in an executive suite environment. My association itself has no smokers but the suite of tenants

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in their various offices, the tenants do smoke.

MS. DuMELLE: Thank you.

Our next speaker is John Pinney.

DR. PENNY: Good morning. I'm John Pinney. I'm CEO of Corporate Health Policies Group, a health care consulting firm in Bethesda, Maryland.

I was the first director of the Office on Smoking and Health in the Department of Health and Human Services, and I've worked directly with hundreds of U.S. employers over the last 15 years helping them to achieve smoke-free work environments.

Over the past 10 years, an important and quite remarkable transformation has taken place in workplaces in the United States. During that period, over three-quarters of all U.S. employers adopted restrictions on smoking on the job.

Surveys conducted in 1991 and 1992, found that approximately 85 percent of U.S. employers had adopted policies to protect their workers from exposure to environmental tobacco smoke.

In addition, these same surveys found that an estimated 35 percent of employers had adopted policies

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which totally banned smoking within their workplaces.

This transformation is important because, as a result, approximately 83 million American workers now have some protection from environmental tobacco smoke while they work, and over 40 million work in totally smoke-free workplaces.

These men and women are being protected from involuntary exposure to environmental tobacco smoke, a known carcinogen, and one of the most serious hazards in the work environment.

The evidence on environmental tobacco smoke is expensive and unequivocal.

The National Institute for Occupational Safety & Health, the U.S. Surgeon General, the National Academy of Sciences, the Environmental Protection Agency, and medical and public health agencies and organizations throughout the United States and the world have all concluded that ETS poses serious hazards for non-smokers.

The EPA's estimate that environmental tobacco smoke causes approximately 3000 lung cancers per year in non-smokers and former smokers, places this highly toxic mixture among the leading environmental and workplace

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carcinogen and more than justifies public policy and regulatory efforts to protect all of our citizens, and especially our young workers and our children.

The transformation of American workplaces from smoke filled to smoke free is remarkable for a number of reasons.

First, it has been accomplished primarily through a combination of voluntary actions, state and local legislation, employee cooperation, and the leadership and support of public health agencies and voluntary health organizations, like the members of the Coalition on Smoking or Health.

Second, it has happened, despite the active opposition of the tobacco industry and its trade association, the Tobacco Institute.

Through attempts at distortion, deception, intimidation, and subversion, the tobacco industry has tried to turn employers and employees away from the simple but vital step that lead to a smoke-free environment.

By casting the issue of involuntary or passive smoking as a matter of choice and courtesy, by its deceptive misuse of published scientific studies, and

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attacks on the credibility of the Surgeon General, by pitting labor against management, and my veiled threats of business retaliation, the tobacco industry has attempted to stem the tide of smoke-free work environments.

Because employers and employees have learned the truth about ETS and have experienced the relatively easy implementations of workplace restrictions, the tobacco industry as failed.

Third: The transformation is remarkable because it has been achieved with relative ease and it has been met with relative calm by smokers and quiet gratitude by nonsmokers. The concerns of some employers and the predictions of the tobacco industry of dire consequence, of smoker backlash and workplace disruptions, of discipline and productivity problems, of compliance, nightmares, and excessive costs, have proven to be totally unfounded.

The majority of employers have found that with thoughtful planning, employee involvement, consideration for smokers, and the offer of help in quitting smoking, the transition to smoke free has been peaceful and quite manageable.

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Companies of all sizes, from E.I. duPont to the local insurance brokerage have found that going smoke free is welcomed by the overwhelming majority of non-smokers and accepted as necessary and inevitable by employees who smoke.

Despite this extraordinarily successful evolution to smoke free, much remains to be done. At current rates, all workplaces may have smoking restrictions by the end of this decade, achieving 100 percent smoke free, with smoking bans inside all workplaces, could take well into the next century.

The adoption of smoking bans is far from uniform across industry types. Of special concern is the exposure of so many young people, many of whom work in bars and restaurants where they must endure constant exposure to environmental tobacco smoke as a part of their job.

Data from the National Cancer Institute shows that workers in the age range, 15 to 19, are significantly less likely to work in a smoke-free workplace and significantly less likely to work where there are any restrictions on smoking at all.

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Of concern also is the fact that among those companies with smoking restrictions, over 40 percent have taken only the first few steps toward a smoke-free workplace and still allow smoking in areas and under conditions that continue to place nonsmokers at risk of exposure while they work.

Whether these workplaces will gradually evolve to smoking bans is difficult to predict. What is clear is that too many workers still have too little protection. For these reasons, OSHA must adopt and aggressively promote adherence to a regulation that offers employers only two alternatives: Either ban smoking entirely or limit it to spaces that are separately ventilated and from which ETS cannot migrate to other work areas, and to protect those millions of young people and others who work in jobs where exposure is still constant, OSHA must make sure that the regulation exempts no class of businesses.

The benefits of such a regulation are clear: All workers will be protected from a serious workplace hazard and many millions will be saved from exposure while hold-out employers drag their feet in doing what they know is needed to protect their workers.

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In addition, if employers follow the lead of those companies already smoke free and offer smoking cessation assistance, literally hundreds of thousands of workers will have another chance to break their addictions to tobacco and lead healthier, more productive lives.

In summary, there are no good reasons for OSHA to adopt anything other than a comprehensive ban on smoking in the workplace, and there are several million good reasons to adopt such a regulation.

MS. DuMELLE: Thank you, John.

Our last speaker is Dr. Robert Zullo -- Z-u-l-l-o -- of Merck & Company. Doctor.

DR. ZULLO: Good morning, gentlemen. I'm Dr. Robert J. Zullo, corporate medical director for employee health at Merck & Company.

On September 1, 1989, we at Merck adopted what I believe was the most restrictive smoking policy anywhere in American industry. This comprised no smoking on any Merck site, be it at a building or several acres of the site.

This was brought about, you may be interested to know, by the fact that my exposure to the devastating

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health effects of smoking first began in 1951 when I was a resident in training at the Memorial Sloan Kettering Cancer Center in New York. Dr. Ernest Winder was a fellow resident and roommate who wrote a landmark article in the Journal of the American Medical Association in 1950, along with Everance Graham, a thoracic surgeon, in St. Louis, pointing out the relationship between lung cancer and smoking. Subsequently, all of the data which Dr. Winder speculated on was proven.

Smoking policy at Merck is totally comprehensive. It began with a kickoff in September 1988, education, awareness, a variety of smoking cessation aids, and went into effect on the date on which I stated.

The policy states that non-compliance with this policy will lead to discipline, up to and including treatment. The five years in which the policy has been in effect, there have been only a few very minor disciplinary actions and no terminations. There was one grievance by a union member, which we took before an arbitration judge, and he recognized that it was primarily the health effects that we were looking for and not health care costs.

Subsequently, of course, in this environment of

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containing health care costs, it is reasonable to assume that what we have done may impact upon health care costs.

At the point in time, any new hire is informed -- may be a smoker, but he's informed of the policy. In the last five years, we have tracked what has happened, and we began with a 25 to 30 percent incidence of smoking. A number of people smoking at the Merck workplace now is approximately 8 to 10 percent.

The other inducing factor, when I came to Merck in 1985, was we did a mortality study across the United States and found out that our people were dying of the same diseases as they were outside industry, and of course the chief cause of cancer death was lung cancer.

We would like to think that as we track these statistics over the next few years, we will have impacted significantly on the lung cancer mortality within Merck.

I would be happy to answer any questions.

Thank you.

QUESTION: Do you have any health problems?

DR. ZULLO: Not that I'm aware of.

QUESTION: Was there cost to Merck?

DR. ZULLO: I have no data on that at the

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present time. We will hopefully track it in the future.

QUESTION: (Inaudible).

DR. ZULLO: I'm sure it has. The initiating factors, as I say, in 1989, were the health of our employees. I had a very personal commitment to this and, fortunately, had a CEO, Dr. Roy Vagillos, a physician also, who is very much in favor of health promotion and the concern about the adverse effects of health on his employees.

QUESTION: Where is your policy in effect?

DR. ZULLO: The policy is nationwide. Merck has approximately 18,000 employees, stretching from New Jersey to California.

QUESTION: Where is Merck Headquarters?

DR. ZULLO: Merck Headquarters is in White House Station, New Jersey. Merck is the largest pharmaceutical company in the world.

QUESTION: You don't have a local office?

DR. ZULLO: We have a Washington office, where we have perhaps 20 or 25 people.

QUESTION: Where is that?

DR. ZULLO: Somewhere here in the middle of

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town.

[Laughter]

MS. DuMELLE: He is from their headquarters.

DR. ZULLO: Yes. I'm from White House Station, New Jersey.

QUESTION: Can you explain why other businesses have not instituted such a program?

DR. ZULLO: As has already been pointed out, I'm sure the tobacco lobby plays great influence.

On the other hand, there were people within the senior management group at Merck who were smokers, who obviously -- and we found, by the way, that many, many people who smoke really don't want to smoke; and so perhaps took that stick, if you will, to help nudge them into a better behavior pattern.

QUESTION: (Inaudible)

DR. PINNEY: In 1992, my company surveyed the Fortune 100, and what we found was that 35 percent of the Fortune 100 had smoke free policies that banned smoking entirely indoors; that 16 percent only permitted smoking in limited, designated smoking areas, and that approximately 85 percent had some form of smoking

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restriction, and many of them indicated that they would be going totally smoke free in the near future.

Unfortunately, we have not surveyed these companies since EPA released its findings on environmental tobacco smoke. The results that I quoted in my statement, covered corporations of all sizes, and there is very little difference now, across companies by size, in the rate of adoption of smoking policies.

The problem that remains is that many of those policies continue to allow smoking in smoking rooms that are not separately ventilated in part of the cafeteria. They allow, in some cases, smokers to designate their offices as smoking areas, so that we have smoke moving throughout the work environment.

While that improves protection to some extent, obviously, from what you've heard today from these two women, it does not eliminate the problem.

Large corporations, on the whole, have set the example, and Merck, I think, is in the forefront, but many of them have followed.

QUESTION: Have you done a study on cost savings?

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DR. PINNEY: There are very few studies on cost and savings. Costs are generally very low, and the main determinant of cost is the extent to which the employer offers smoking cessation to employees and pays for it. Those costs can be substantial, however, I believe that the Doctor would agree with me, that this is part of an ongoing commitment to employee health promotion anyway, and it's not an extraordinary budget item.

The response of employees is generally pretty good. The problem that we have is that 75 percent of employees in this country work in companies of 499 employees and less.

It's much more difficult for those employers to finance help in quitting smoking, even though the majority of employed smokers, like all smokers, would like to quit and often respond to a stimulus, like going smoke free.

QUESTION: What are the costs (inaudible).

DR. PINNEY: The costs that I've heard quoted range from a few thousand to many thousand dollars. That depends, of course, on the configuration of the building. If you have to punch a hole in the side of the building in order to achieve separate ventilation, it can be quite

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costly.

Many of the separately-ventilated spaces that I visited in companies that have those type of smoking areas, in my opinion, is worse than allowing smoking throughout the workplace, because the smoke does filter out into the work area, and smokers themselves are exposed to very high levels, simply because the ventilation can't take it all out.

I think that's a very unsatisfactory, although appropriate, alternative for workplaces where for some reason of the work being performed, it's not possible for employees to take time away from their workstations.

QUESTION: Under the OSHA rules, estimates (inaudible) separate ventilation costs.

DR. PINNEY: No, I think the rule is appropriate as is, if the ventilation achieves the end, which is to keep the smoke out of the surrounding work area. It needs to be at a high enough level to keep the ambient smoke in the smoking room from posing an additional risk to smokers.

DR. DuMELLE: I need to response in one way.

As you all know, OSHA in its health standard

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setting process, does not consider the costs or benefits. This is merely an issue of the health information and science information.

We did include in your pack a fact sheet on cost and benefits. This is really done in relationship to some federal legislation, H.R. 3434, which was introduced last spring by Representative Henry Waxman, subcommittee chair, Health Subcommittee in the House. That's a reference point.

But, in reality, OSHA, in setting this standard, is really looking at just the health data.

QUESTION: How do we enforce legislation for (inaudible)?

MS. DuMELLE: The requirement for separately ventilated.

QUESTION: (Inaudible)

MS. DuMELLE: I think the Waxman legislation was introduced as a mechanism to remove consistent regulation nationwide, forward.

OSHA, at the same time, has had this process in place from the point in time when they did their request for information. I think Mr. Waxman's intent is to sort

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of force OSHA to do the right thing, if you will, and move forward in a standard setting way that really focuses the right agency on the right job.

QUESTION: What about the FDA?

MS. DuMELLE: The FDA regulation is really not related to the issue of workplace smoking. It is a much broader regulation of tobacco products in general.

QUESTION: (Inaudible).

MS. DuMELLE: This is a step forward in terms of smoke-free worksites. The Food and Drug Administration's efforts are related to other aspects of tobacco control, more aimed at the advertising, promotion, and regulation of tobacco products.

QUESTION: (Inaudible)

DR. PINNEY: No, I think the experience of companies -- and we studied this. I did work at Harvard University several years ago, and we found that small businesses had no serious difficulties in enforcing the policy.

The only problem is when the boss smokes. At that point, employees need some recourse to regulation in order to force their employer to provide a smoke-free

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workplace.

In general, these are self-enforcing policies. You have to remember, the majority of employed people in this country are nonsmokers. There may be variations from worksite to worksite, depending on the make-up of the workforce but, in general, nonsmokers are the majority in every worksite.

Given the added leverage of an OSHA regulation, I think many of those foot draggers will go along. But enforcement has not been a major problem.

QUESTION: Would (inaudible) pose a problem with (inaudible).

DR. PINNEY: I think it would pose a serious problems for a number of reasons, not the least of which would be that OSHA would be creating an accepted class of employees for whom it was okay in their view to be exposed to the highest levels of environmental tobacco smoke of any employee group, which I think would be a terrible precedent. I would urge OSHA not to even consider that option.

QUESTION: In essence, it's the way (inaudible).

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DR. PINNEY: I can't comment on the political process. I can only say that public policy that creates a class of workers, many of whom are very young, who are allowed to be exposed, while the majority of workers have the benefit of protection, it seems to me to be ludicrous and, frankly, a terrible precedent for any agency to set.

QUESTION: How many businesses have some sort of restriction (inaudible).

DR. PINNEY: About 85 percent of all companies in the United States -- all worksites in the United States -- have some form of smoking restriction, and it's about 35 percent that have a total ban.

Again, we have not surveyed -- no one has surveyed extensively -- since EPA made its announcement, identifying tobacco smoke is a Class A carcinogen.

My expectation would be the numbers have jumped up, certainly within large corporations, where many of them were moving in that direction already, but I would expect it to be in effect across the board.

QUESTION: What year (inaudible).

DR. PINNEY: '92 -- the latest figures that I have are '92.

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QUESTION: (inaudible)

MS. DuMELLE: This is similar to the experience of the airlines when they went smoke free. This is the routine carpet cleaning, it is burn marks, it is the reduced need for the cleaning of ventilation duct work.

One of the things that we found out, for example, on the airline ban, that many of us don't think about, is the tars and nicotine in tobacco smoke and the fact that these are quite sticky, difficult substances to clean up.

The oxygen deployment trap that's supposed to open up when an emergency occurs, in the old smoking sections of aircraft, they were stuck together 85 percent of the time when they had test push because of the tars and nicotine. That's the kind of clean-up problems.

Total re-doing carpeting, for example, because of cigarette burn marks. So that is why you will always find maintenance to be a higher savings.

Those figures were done by the Waxman Subcommittee, and if you want further information, Phil Burnett, on his staff, is available.

We'll take one more question.

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QUESTION: The argument has been suggested that volumes (inaudible) and that would take lots of long-term (inaudible) as well as the (inaudible) social security with the (inaudible) and Medicaid and Medicare.

DR. MUNZER: That's an argument that has been made recently by the tobacco industry. I think it's an argument that clearly shows how thoroughly morally bankrupt the tobacco industry is.

It is so cynical to say that, because people are going to die, we're going to be saving money, and therefore we should allow people to continue smoking. This is really advocating a mass suicide, if you will.

QUESTION: (inaudible)

DR. MUNZER: The OSHA figure applies primarily to the workplace, and the 50,000 number is the total estimated number of deaths due to the exposure to environmental tobacco smoke.

QUESTION: Do you agree with the OSHA estimates?

DR. MUNZER: I think it's a good estimate.

QUESTION: What's the 50,000 number?

DR. MUNZER: The 50,000 is based on a

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combination of what you will find in the EPA report, which does not include deaths due to heart disease. If you add those on, and information that has become available since the EPA report has come out, you'll come up to about 50,000.

QUESTION: (Inaudible)

DR. MUNZER: That's the American Heart Association, primarily.

QUESTION: (Inaudible) aren't you talking about prohibition?

DR. MUNZER: No, not at all. We are not talking about prohibition. We know that prohibition did not work in the past.

We know that smoking nicotine is addictive, unfortunately, and therefore, even if people stopped smoking, even if there were no new smokers coming into the market today, we would still have a problem for a long time to come.

We do believe very strongly that, in the meantime, while people are educated not to smoke, while kids are taught not to take up the smoking habit, we should limit the exposure of Americans who do not smoke,

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to environmental tobacco smoke, and that's what this measure is all about.

MS. DuMELLE: Thank you, ladies and gentlemen. The speakers are available for further questions.

(Termination of press conference.)

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SUMMARY OF PHILIP MORRIS U.S.A.'S CONCERNS ON OSHA'S PROPOSED INDOOR AIR QUALITY RULE

Washington, DC, September 19 -- OSHA's proposed rule on indoor air quality is beyond the Agency's legal authority and completely unworkable in its application.

In the 1970s OSHA attempted to utilize a policy of regulating workplace risk to its lowest feasible level. In 1980, The Supreme Court held that this was not permitted under the OSHA law and that OSHA could only regulate a significant risk of material impairment to health in the workplace -- not every risk.

In regulating every substance to date, OSHA has established a permissible exposure level for the substance in question. For environmental tobacco smoke (ETS), however, OSHA has mandated a zero exposure level, which clearly violates the Supreme Court's decision.

The proposed regulation is unworkable because it would create a de facto smoking ban in all areas that can be deemed workplaces -- including private offices, bars, restaurants, hotel rooms, and even residences and cars when they are used as workplaces.

Following is a summary of additional Philip Morris U.S.A. concerns about the proposed regulation:

- OSHA's Proposed Rule conspicuously, and incorrectly, omits any discussion of ETS within the context of its discussion on general indoor air quality (IAQ) and the identification of specific causes of sick-building complaints. The Proposed Rule separates ETS from IAQ by claiming that ventilation procedures cannot address ETS. This position is without persuasive scientific support, contrary to both theory and practice, and dictated by a policy dedicated to the elimination of smoking.

- With remarkable disregard for submissions to the OSHA RFI (request for information) docket, the published scientific literature, and accepted theoretical and practical knowledge about heating, ventilation and air conditioning (HVAC) design and operation, OSHA states that the ventilation approach in its Proposed Rule on IAQ cannot be applied to complaints about, or exposure to, ETS in the workplace.

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- OSHA states that "the primary objective of the tobacco smoke provision is to eliminate non-smoker exposure to ETS." Its Proposed Rule on indoor air quality in work environments, while presenting the outward appearance of a single, comprehensive approach to indoor air quality problems through ventilation, actually constitutes two separate rulemakings-- one for environmental tobacco smoke, and one for every other potential constituent in indoor air. OSHA thus proposes disparate treatment within one standard, one designed to reduce exposures to every potential substance occurring in the indoor air except ETS, and another designed to eliminate all exposure to ETS in the workplace. According to the Proposed Rule, the elimination of smoking from the workplace means that smoking is either to be prohibited altogether, or restricted to a separate room that is negatively pressurized and separately exhausted to the outdoors. In many cases, and particularly for small businesses, the cost of such a room would be prohibitively expensive.

- OSHA's position is contradictory, in that ventilation in the workplace maintained according to OSHA's own Proposed Rule on IAQ, for the reduction of levels of indoor substances associated with sick-building syndrome complaints, will also significantly reduce exposures to ETS. Case reports and published studies support this position, and were submitted by Philip Morris in response to OSHA's RFI and again in response to this Proposed Rulemaking.

CONCERNS REGARDING OSHA SCIENCE:

- The Occupational Safety and Health Act of 1970 requires OSHA to develop a standard "that most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity." (59 FR 16007-8) Moreover, the courts have determined that OSHA "ultimately bears the burden of proving by substantial evidence that ... a risk exists and that the proposed standard is necessary." (965 F.2d 962)

- OSHA fails to demonstrate a significant risk of material impairment for any disease endpoint among nonsmokers reportedly exposed to ETS in the workplace. OSHA uncritically accepts, without discussion of its quality or obvious weaknesses, one epidemiological study on ETS to determine a "significant risk" of lung cancer in the workplace. The data from thirteen other available studies on nonsmoker lung cancer in the workplace, eight of which are from the United States, are ignored. These studies together do not support OSHA's position.

- The Proposed Rule also utilizes a single epidemiological study on cardiovascular disease that deals with spousal smoking in the home to generate "significant risk," while ignoring available studies on reported ETS exposures and cardiovascular disease in the workplace.

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- The Proposed Rule bases its "exposure assessment" for ETS upon a select, outdated and unrepresentative group of ambient air monitoring studies, some of which do not deal with workplace exposures to ETS at all.

- The Proposed Rule cites no published studies on ambient nicotine or particle measurements in the workplace after 1991. This is important because recent data on ambient ETS exposures in the workplace indicate that such exposures are typically minimal: often below the limit of detection for sensitive air monitoring devices and often indistinguishable from background levels of constituents generated by other common sources in the workplace.

- The Proposed Rule fails to establish that smoking bans or separately enclosed and ventilated smoking areas are "reasonably necessary or appropriate," because OSHA fails to demonstrate that the proposal is either economically or technologically feasible for all workplaces.

- OSHA acknowledges that as many as 90% of all non-industrial workplaces have a smoking policy of one form or the other, while arguing that the "market economy" has failed to generate "adequate" restrictions on nonsmoker exposure to ETS.

- The ventilation rates required in OSHA's Proposed Rule on IAQ are also sufficient to address ETS constituents in the workplace. OSHA, however, denies that ventilation is an effective approach to address ETS in the workplace.

- Accordingly, the Proposed Rule fails to consider alternatives to the smoking ban and/or the enclosed, separately ventilated smoking room. Such alternatives exist at reduced costs and with less disruption of current workplace interactions between smokers and nonsmokers. Such alternatives include adequate ventilation, the separation of smokers and nonsmokers, and the use of "air pressure zoning" in the workplace, where smokers are placed nearer exhausts and nonsmokers nearer outdoor air supply intakes.

- It is therefore clear that OSHA's rulemaking on ETS is directed at regulating the smoker rather than "protecting" the nonsmoker. In addition, it takes the decision to establish a workplace smoking policy that accommodates the preferences of both smokers and non-smokers out of employers' and employees' hands by effectively imposing a complete ban on workplace smoking.

Reasonable Alternatives:

- Philip Morris U.S.A. recognizes that indoor air quality is an important issue that is properly addressed through a Building Systems Approach--attention to the design, maintenance and operation of a building's ventilation system. We encourage the maintenance of acceptable indoor air quality in workplaces and other indoor spaces, whether or not smoking occurs.

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- Whether moderate, discretionary smoking occurs or whether smoking is limited to designated smoking areas, the scientific data indicate that nonsmoker exposure in properly ventilated areas is minimal. In addition, the available scientific data do not convincingly support claims that ETS is associated with an increased risk of disease.

- We believe indoor smoking should be addressed as part of an overall, comprehensive approach to the indoor environment, and we believe smokers and nonsmokers can be reasonably accommodated in the workplace. By addressing overall indoor air quality, decisions about accommodating indoor smoking will rightfully be left to employers and employees to determine what is appropriate for their particular workplace. This approach is favored by the American public and businesses over intrusive government regulation.

- Each workplace is unique; buildings vary dramatically in size, design, building materials, age, geographic location and the preferences of their occupants. Smoking policies should address the unique features of the individual workplace. Numerous technical options exist to complement any smoking policy in any workplace environment. Engineering and technology provide the tools to improve indoor air quality and, at the same time, accommodate smoking.

- Depending upon the nature of the indoor space and the interests of those using that space, options for indoor smoking may vary from discretionary smoking throughout the indoor space to indoor smoking in designated smoking areas. For example, the simple separation of smokers and nonsmokers, even under conditions of a shared ventilation system with the recirculation of air, can be effective. Adequate ventilation will reduce complaints about indoor air quality, but it should be supplied to all spaces, regardless of smoking, for occupant comfort and well-being.

- Any requirement that smokers congregate in an enclosed space could place added demands upon a ventilation system, forcing the building owner or employer into expensive, sometimes cost-prohibitive, reconstruction, maintenance and operation of the air-handling system. In many instances, simple separation and adequate ventilation will provide similar reductions in exposures for nonsmokers.

- A smoking ban is unjustified by the scientific data on ETS exposures in the workplace and public places, and it does not address fresh air ventilation or reduction of exposure to other substances in the indoor air.

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BIOGRAPHICAL INFORMATION

PATRICK R. TYSON

Patrick R. Tyson spent 13 years with the Occupational Safety and Health Administration in Washington, D.C. He held a number of positions with the agency and was ultimately the Acting Administrator. Since leaving in 1986, he has been exclusively engaged in the practice of OSHA law, representing a number of different companies all over the country. He represents Philip Morris and its subsidiaries in worker safety and health matters.

RICHARD A. CARCHMAN

Richard A. Carchman, Ph.D., received his Doctorate at the State University of New York, Downstate Medical Center. He received postgraduate training at the National Cancer Institute and then took a faculty position at the Medical College of Virginia where he achieved the rank of tenured professor of Pharmacology, Toxicology and Biostatistics. He has published nearly 100 papers in peer reviewed journals and more than one dozen chapters in scientific books. He has been a health-effects consultant to the Environmental Protection Agency, Centers for Disease Control and other governmental agencies and industry. His research has been supported by government grants and contracts and he is a member of numerous professional societies and a reviewer for several scientific journals. Currently he is the Director of Scientific Affairs for Philip Morris U.S.A.

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Brennan M. Dawson is Senior Vice President for Public Affairs for the Tobacco Institute, the Washington, D.C.- based trade association representing the major U.S. cigarette manufacturers. She is the chief spokesperson for the Tobacco Institute and director of communications activities in support of the industry's political and public relations agendas. Prior to joining the tobacco industry in 1986, Ms. Dawson spent five years working on social policy issues as a political appointee of the Reagan Administration at the U.S. Department of Health and Human Services.

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Practical Implications of OSHA's Proposed Workplace Smoking Restriction

THE PROPOSED REGULATION

The federal Occupational Safety and Health Administration (OSHA) has proposed an indoor air quality regulation that seeks to "eliminate nonsmoker exposure to ETS." Under the proposed regulation, smoking must be banned entirely or restricted to designated areas which meet certain criteria. (Proposed 29 CFR § 1910.1033(e)(1)). Specifically, the designated smoking areas must be (1) enclosed, (2) exhausted directly to the outside, (3) maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area, (4)"non-work areas" (Proposed 29 CFR § 1910.1033(b)) and (5) clearly posted. The proposal further requires employers to assure that employees are not required to enter designated smoking areas in the performance of "normal work activities." (Proposed 29 CFR § 1910.1033(e) (1)(iv)). Cleaning and maintenance work may be conducted in designated smoking areas when no one is smoking in the area. (Proposed 29 CFR §1910.1033(e)(1)(iii)).

PRACTICAL IMPLICATIONS

The smoking provision in the proposed regulation covers all indoor workplaces under OSHA jurisdiction. (Proposed 29 CFR §1910.1033(a)(2)). There are no exceptions or exclusions from this coverage. For example, the proposal would cover private residences used as workplaces, hotels and motels, private offices, restaurants and bars and vehicles used as workplaces.

Private Residences

Where a private residence is a workplace, the proposed regulation would require the employer (i.e. the homeowner or home service contractor) to restrict smoking in the home to a designated area meeting the specifications of the regulation. The Occupational Safety and Health Act defines "employee" to mean "an employee of an employer who is employed in a business of his employer which affects commerce." (29 U.S.C. § 652(6)). According to this definition, a maid, nanny, nurse, repair person, delivery person, or any other individual who is paid to perform work in a home is an employee protected by the OSH Act. The OSH Act defines "employer" as "a person engaged in a business affecting commerce, who has employees... ." (29 U.S.C. § 652(5)).

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A company that contracts with a homeowner to provide service in the home would be an employer covered by the Act. The proposed regulation would thus require home service companies to ensure that there is no smoking in the home, except in designated areas meeting the criteria set forth in the regulation.*

Hotels and Motels

The proposed smoking restriction also covers hotels and motels. This would include private parties or meetings held in hotel conference rooms, as well as sleeping rooms in hotels and motels. The proposed regulation is not clear on whether guests would be prohibited from smoking in hotel rooms at any time, or just while others are working in the room. In either case, the restriction is hardly necessary. Maids and maintenance personnel are nearly always the only employees who normally work in hotel rooms, and they usually perform their work while the rooms are unoccupied. The regulation is blatantly inconsistent because it prohibits smoking in sleeping rooms of hotels and motels, while allowing custodial and maintenance employees to work in unoccupied smoking areas. The rulemaking record offers no evidence that OSHA even considered that its proposal would result in this unreasonable distinction.

Offices

OSHA has included in its proposal the requirement that the designated smoking areas be "non-work areas" and that employers assure that employees, other than custodial or maintenance employees, are not required to enter designated smoking areas in the performance of "normal work activities." By this provision, OSHA has effectively prohibited employers from designating as smoking areas, any rooms or offices where either smoking or non-smoking employees work on a regular basis. Thus, if one employee desired to make his private office or work room a designated smoking area, he would be legally prohibited from doing so, even when no other employee would ever need to enter that office or room. Under the proposed regulation as it is currently written, the fact that the employee is required to perform "normal work activities" in his own office would prevent him from smoking there, even though the office meets all other specifications for a designated smoking area. This aspect of the proposed regulation is overly broad and without rational basis.

Restaurants and Bars

The proposed regulation would cover restaurants, bars, and other food service establishments. Since designated smoking areas in such establishments cannot be normal work areas, as the proposed regulation currently requires, customers would not be permitted to smoke at tables or bars where waiters and bartenders normally work. This restriction would effectively ban smoking by patrons of restaurants and bars entirely, as well as catered private parties, bowling alleys, etc. Such an effort would undoubtedly have a significant adverse economic impact. Apparently recognizing this, OSHA has invited comments on feasibility considerations relative to such establishments and suggestions for alternative ways to assure that nonsmoking workers will not be exposed to tobacco smoke there.

*** The proposed regulation offers no guidance on exactly how a home service company is to assure that a customer does not smoke in the customer's home. Presumably, the home service company must insist that the customer not smoke in the customer's own home.**

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Vehicles

The proposed regulation would, in some circumstances, prohibit employees from smoking in vehicles used in the course of employment. Such vehicles, whether a company truck or an employee's personal car, are indoor workplaces and are thus covered by the smoking provisions of the proposed regulation. If an employee's car is used in the course of employment, he would be prohibited from smoking in that vehicle if non-smoking workers were present. Like the restriction on smoking in the home and in hotel rooms, it is not clear from the language of the proposed regulation whether smoking would be prohibited in such vehicles at any time, or just during working hours.

Employer Costs

The proposed regulation that designated smoking areas be enclosed may or may not be prohibitively costly for the employer, depending on the facility. The requirement that smoking room air be exhausted "directly to the outside," however, would likely cost most employers the expense of purchasing and installing the duct work necessary to vent smoking room air outside and the expense of purchasing and installing fans capable of maintaining the required negative pressure. Employers, in some instances, would incur the added expense of energy costs to operate the fans, as well as the expense to heat or cool intake air to replace the air exhausted from the smoking room. Whether an employer would provide a smoking room despite these costs depends on the employer's financial status and the dynamics of the employer-employee relationship. It is likely that many employers would be unable to provide an enclosed smoking area due to technical or financial concerns. Consequently, the feasibility of the proposed regulation is seriously challenged.

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OSHA'S PROPOSED RULE ON INDOOR AIR QUALITY NOT BASED ON 'BEST AVAILABLE EVIDENCE'

Washington, DC, Sept. 19 -- OSHA's Proposed Rule on indoor air quality (IAQ) is not based upon "the best available evidence" as required by the OSH Act. OSHA's claims about environmental tobacco smoke (ETS) are often unsupported, data are often misinterpreted and important studies are ignored. Some examples follow below.

SELECTIVE USE OF DATA

- The Proposed Rule bases its assessment of exposure to ETS in the workplace upon a select, outdated and unrepresentative group of ambient air monitoring studies, some of which do not deal with workplace exposures to ETS, and none of which record typical levels of ETS beyond 1991. Moreover, the exposure data are not even used in the Agency's determination of "significant risk" from ETS exposures.

- The Proposed Rule uncritically accepts, without discussion of quality or obvious weaknesses, one epidemiologic study on ETS to determine "significant risk" of lung cancer in the workplace. (59 FR 15995) The data from 13 other available studies on nonsmoker lung cancer in the workplace, eight of which are from the U.S., are ignored. Those studies, considered as a whole, do not support OSHA's claims. No convincing reasons for the selection of the single study are given by OSHA.

- The Proposed Rule utilizes a single epidemiologic study on cardiovascular disease that deals with spousal smoking in the home to generate "significant risk," while ignoring available studies on reported ETS exposures and cardiovascular disease in the workplace. (59 FR 15995)

- OSHA's discussion of animal studies fails to reference one study that specifically examined sidestream (inhalation) exposure in animals, which did not report an increased risk of lung tumors among the exposed animals. (Haley, et al., 1987)

- OSHA's misleading use of the 11 epidemiologic reports it cites on ETS and heart disease is evident in the manner in which these reports are grouped in Table IV-2 of the Proposed Rule. (59 FR 15993) In two instances, once in the "Positive" column and once in the "Equivocal Positive Trend" column, OSHA cites the same study twice. (Helsing, et al., and Sandler, et al; Gillis, et al. and Hole, et al.) Listing all four reports, when only two studies are represented, gives the impression that more "positive" data are available than in fact is the case.

- One of the studies with workplace data, Dobson, et al., is categorized by OSHA as "positive." However, in this study, the odds ratios (risk estimates) were less than one for ETS exposure at work. The authors concluded that "the odds ratios of passive smoking at work did not suggest increased risk."

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- OSHA omits reference to at least 24 published reviews and data-gathering studies that do not support the claim that ETS exposure in nonsmokers leads to an increased risk of heart disease.

- OSHA's list of spousal smoking and lung cancer studies is incomplete and inaccurate; OSHA failed to consider all available data. OSHA cited 27 spousal smoking studies and did not include data from eight published spousal smoking studies. One of those studies reported a statistically significant negative risk estimate for exposure to ETS. In addition, it must be noted that 14 of these included workplace exposure data, but only one workplace study was even discussed by OSHA.

MISREPRESENTATION OF DATA

- OSHA states that "fourteen [spousal smoking studies] showed a statistically strong association between exposure to ETS and lung cancer... Studies that were determined to be positive by OSHA's review standards met standard epidemiologic and statistical criteria to support causation." (59 FR 15992-15993) Of the fourteen studies designated "positive" or "statistically strong," **less than half report statistically significant overall risk estimates.**

- OSHA characterizes one study (Brownson, et al., 1992) as "positive," when that study reported an overall risk estimate for lung cancer of 1.0 (i.e., no increased risk).

- The Proposed Rule cites a comprehensive review of carbon monoxide exposures by Guerin, et al. [Ex. 4-129] and states that the authors "report that physiologically adverse effects occur in humans at 2.5 percent carboxy-hemoglobin (COHb) blood content. Cumulative carbon monoxide levels due to ETS that result in such an effect are not uncommon in work environments [Ex. 4-129]." Guerin, et al. actually conclude: **"Hence, studies which quantitated the percentage of COHb (a blood protein that carries carbon monoxide) in nonsmokers show very little difference in nonsmokers who were or were not exposed to ETS."** In other words, the levels were indistinguishable. The authors also conclude: "Studies which measure the concentration of COHb in both ETS exposed and non-exposed subjects is consistent with environmental CO measurements, and have demonstrated no consistent significant differences in most indoor environments."

- OSHA cites Ex. 3-38 to support its claim that ETS has acute effects in angina patients. However, this submission consists of materials from the State of Washington relating to a proposed indoor air regulation. It has no relevance in the context in which OSHA cited it. On the same point, OSHA cites Millhorn, 1989. But this is not a study of ETS. It is a review of behavioral issues related to nicotine, as they might be relevant to physicians' advice to their patients about smoking.

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- OSHA claims that "the effects of environmental smoke exposure on the fetus may have long-term sequelae (consequences) into childhood and adulthood." (59 FR 15979) The first three studies cited by OSHA make no mention of any purported "effects" of ETS exposure during pregnancy. The fourth study cited by OSHA is a study of active maternal smoking during pregnancy. OSHA also cites a Centers for Disease Control survey which provides no information, conclusions or data regarding the possible effects of maternal ETS exposure during pregnancy. Surprisingly, the final citation by OSHA in this context is a letter to the editor.

- Results from numerous sick-building studies from the National Institute on Occupational Safety and Health (NIOSH) and Health and Welfare, Canada, submitted to the OSHA RFI (Request for Information) Docket indicate that ETS can be associated with complaints in only two to five percent (2%-5%) of all sick building investigations. (Ex. 3-1053, 3-1073, 3-1074, 3-955)

- OSHA mentions a database compiled by NIOSH in support of its claim that inadequate ventilation is associated with approximately one-half of all complaints in sick-building investigations. (59 FR 16003 and 16010) OSHA **fails to mention that the same database concluded that tobacco smoke was a source of claimed discomfort in only two percent of all buildings investigated.**

- The Proposed Rule states: "[I]t can only be inferred that the standard [ASHRAE 62-1989] was mostly based on satisfaction of sensory comfort rather than the control of contaminants like ETS which may contribute to adverse health effects like lung cancer and heart disease." (59 FR 15992) However, the purpose of ASHRAE Standard 62-1989 is to establish ventilation rates and procedures for various indoor settings in order to "control carbon dioxide and other contaminants with an adequate margin of safety and to account for variations among people, varied activity levels, **and a moderate amount of smoking."** (Ex. 3-1074) The Proposed Rule does not mention this passage from the ASHRAE Standard.

CONCLUSORY STATEMENTS

- OSHA claims, but does not reference or demonstrate, that ventilation parameters fail to effectively reduce and minimize exposures to ETS. For example, the Proposed Rule states: "Ventilation systems are designed only to remove occupant-generated contaminants, such as carbon dioxide and odors. These types of systems were not designed to dilute multiple point sources of contaminants that are typically found in non-industrial workplaces." (59 FR 15973) **No references for this statement are provided.** The Proposed Rule further states: "The carcinogenicity of ETS discounts the use of general ventilation as an engineering control for this contaminant." (59 FR 15991-2) This statement also is not referenced and contradicts OSHA's own position on permissible exposure limits (PELs) for numerous so-called "carcinogens" in the workplace.

(more)

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INFORMATION ON THE BEST AVAILABLE EVIDENCE REQUIREMENT

Excerpt from the Occupational Safety and Health Act of 1970 states:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, **on the basis of the best available evidence**, that no employee will suffer material impairment of health or functional capacity ... (59 FR 16007-8) (emphasis added)

Federal judicial reviews of previous OSHA proposed standards provide interpretations of "best available evidence," i.e.:

- [T]he agency must pinpoint the factual evidence and the policy considerations upon which it relied. This requires analysis of the assumptions underlying predictions or extrapolations, and of the basis for its resolution of the conflicts and ambiguities. In enforcing these requirements, the court does not reach out to resolve controversies over technical data. **Instead, it seeks to ensure public accountability**." 965 F. 2d 962, 970. (emphasis added)

- "The lesson of Benzene is clearly that OSHA may use assumptions, but only to the extent that those assumptions **have some basis in reputable scientific evidence.** " 965 F.2d 962, 978. (emphasis added)

- "While our deference to the agency is at a peak for its choices among scientific predictions, **we must look for some articulation of reasons for those choices**..... explicit explanation for the basis of the agency's decision not only facilitates proper judicial review but also provides the opportunity for effective peer review, legislative oversight and public education. This requirement is in the best interest of everyone, including the decision makers themselves ....**mere conclusory statements, ...are simply inadequate to support a finding of significant risk of material health impairment.**" 965 F. 2d 962, 975. (emphasis added)

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